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Contents

Federal Register

Vol. 70, No. 189

Friday, September 30, 2005

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 70, No. 189
Friday, September 30, 2005

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–127–2]

West Indian Fruit Fly; Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the West Indian fruit fly regulations by removing grapefruit, sweet lime, sour orange, and sweet orange from the list of regulated articles. A review of available scientific literature and other information led us to conclude that these citrus fruits do not present a risk of spreading West Indian fruit fly. This action affirms the elimination of restrictions on the interstate movement of these citrus fruits from areas quarantined because of the West Indian fruit fly.

DATES: The interim rule became effective on April 26, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Program Manager, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The West Indian fruit fly regulations, contained in 7 CFR 301.98 through 301.98–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of West Indian fruit fly (*Anastrepha obliqua*) to noninfested areas of the United States. Regulated articles are listed in § 301.98–2, and quarantined areas are listed in § 301.98–3(c). There are currently no areas in the continental United States quarantined for the West Indian fruit fly.

In an interim rule effective and published in the **Federal Register** on April 26, 2005 (70 FR 21325–21326, Docket No. 04–127–1), we amended the regulations by removing grapefruit, sweet lime, sour orange, and sweet orange from the list of regulated articles for West Indian fruit fly because the available information indicates that these fruit do not present a risk of spreading West Indian fruit fly.

Comments on the interim rule were required to be received on or before June 27, 2005. We received one comment by that date. The commenter—a State government official—raised several issues, which are addressed below.

First, the commenter stated that the literature and record review used as the basis of the interim rule not only provides weak support for removing *Citrus* spp. as a host of West Indian fruit fly, but actually substantiates *Citrus* spp. as an occasional host. We disagree with this comment. The literature review examined nine papers that were based on original research and that supported *Citrus* spp. as a host to West Indian fruit fly. A detailed evaluation of these papers' quality led APHIS to conclude that the evidence supported only a low likelihood that *Citrus* spp. are a host. After conducting this review and examining the multi-year interception data included in the report, we do not believe that the low likelihood of *Citrus* spp. being a host is sufficient to support the continued listing of these fruits as regulated articles.

Second, the commenter stated that without formal regulations for West Indian fruit fly and with the lack of a sensitive and effective detection trap, a serious threat is posed for too many commercial and dooryard hosts in Florida, including mango, guava, carambola, avocado, pear, peach, and other tropical fruits. We are making no changes based on this comment. The interim rule did not remove all of the regulations for West Indian fruit fly. Instead, the interim rule simply removed four articles—grapefruit, sweet lime, sour orange, and sweet orange—from the list of regulated articles; the remaining provisions of the regulations will remain intact. In addition, we will continue using our current detection system, which has proven to be an effective method for determining if a population of fruit flies exists.

Third, the commenter stated that the interception records cited do not provide reliable data either due to inadequate identification of specimens or a low interception rate of hosts. The commenter stated that over 3,000 *Anastrepha* spp. larvae per year were intercepted over the period listed in Table 1 of the literature review, which identifies a high rate of risk. We are unclear on the source and context of the number cited by the commenter. Table 1 in the literature review presented interception data from the Greater and Lesser Antilles. Of 17,258 interceptions, only 8 interceptions were reported as occurring in *Citrus* spp. Upon a closer review of these eight reports, most were deemed invalid as proof of infestation—three were reported as on fruit (not in fruit), two were listed as adults, one was listed as on leaves, and one was from citrus obtained in Haiti and intended for use as on-board food on an airline flight that departed from Haiti. The final interception could have been *Anastrepha suspensa,* as this pest is known to use *Citrus* spp. as a host and *Anastrepha obliqua* larvae can not be reliably differentiated from *Anastrepha suspensa* larvae using keys. Given this analysis, the evidence supported a conclusion of low likelihood of the host status of *Citrus* spp.

Finally, the commenter called for additional data and scientific justification for the change in the regulations and suggested that an interactive risk assessment be conducted by APHIS in concert with certain concerned and affected States before further action is taken. We are making no changes based on this comment. We continue to believe that the information contained in the literature review provides a sufficient basis for our determination that there is only a low likelihood that *Citrus* spp. would be a host to West Indian fruit fly. If more research regarding this topic is published, we may reevaluate the host status of *Citrus* spp. with respect to West Indian fruit fly.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 21325–21326 on April 26, 2005.

Done in Washington, DC, this 26th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19576 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–129–5]

Mexican Fruit Fly; Quarantined Areas and Treatments for Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations to provide for the use of irradiation as a treatment for fruits listed as regulated articles. We are also adopting as a final rule, without change, an interim rule that amended those regulations by removing a portion of San Diego County, CA, from the list of quarantined areas. Those interim rules were necessary to provide an additional option for qualifying regulated articles for movement from quarantined areas and to relieve restrictions that were no longer needed to prevent the spread of Mexican fruit fly to noninfested areas of the United States.

DATES: The interim rules became effective on February 20, 2003, and October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas.

In an interim rule effective January 15, 2003, and published in the **Federal Register** on January 21, 2003 (68 FR 2679–2680, Docket No. 02–129–1), we amended the regulations in § 301.64–3 by designating a portion of San Diego County, CA, as a quarantined area for Mexican fruit fly. That action was necessary to prevent the spread of the Mexican fruit fly to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending March 24, 2003. We received five comments by that date. They were from fruit and vegetable producers and an individual.

One commenter supported the interim rule. The remaining commenters raised questions about the location of the boundary lines for the quarantined area, arguing that the boundary lines were beyond what was necessary for quarantine purposes and requesting that the lines be reexamined and redrawn.

The process for establishing quarantine boundaries is based on our experience and scientific information concerning the Mexican fruit fly's life cycle and its ability to spread, both naturally and by artificial means. For operational and quarantine enforcement reasons, boundaries often follow easily identifiable markers, such as major roads or other county and city lines. We remain sensitive to the needs of producers and make every effort to minimize quarantined areas. Currently, Mexican fruit fly has been eradicated from the designated part of San Diego County, CA, and there are no longer any areas in California quarantined for the Mexican fruit fly.

In a second interim rule effective February 20, 2003, and published in the **Federal Register** on February 26, 2003 (68 FR 8817–8820, Docket No. 02–129–2), we amended the regulations in § 301.64–10 to provide for the use of irradiation as a treatment for fruits that are regulated articles. That change provided an additional option for qualifying those regulated articles for interstate movement from areas quarantined because of Mexican fruit fly.

We solicited comments concerning the interim rule for 60 days ending April 28, 2003. We received three comments by that date. They were from State and Federal government representatives and an individual.

One commenter supported the interim rule, and suggested that we should also consider allowing the use of irradiation as a treatment option for all fruit imported into the United States from Mexico to mitigate the risk posed by Mexican fruit fly.

In the regulations governing the importation of fruits and vegetables (Subpart—Fruits and Vegetables, 7 CFR 319.56 through 319.56–6), § 319.56–2(k) provides that any fruit or vegetable that is required to be treated or subjected to other growing or inspection requirements to control one or more of the 11 species of fruit flies and one species of seed weevil listed in 7 CFR 305.31(a) as a condition of entry into the United States may instead be treated by irradiation in accordance with part 305. The Mexican fruit fly is among the 11 species of fruit flies listed in § 305.31(a), so irradiation is already an option for any fruits or vegetables imported from Mexico that are required to be treated or subjected to other measures to control Mexican fruit fly.

Another commenter stated that the minimum absorbed treatment dose should be reduced from 150 gray to 70 gray, since some fruits may suffer damage as a result of higher dosimetry.

In a proposed rule published in the **Federal Register** on June 10, 2005 (70 FR 33857-33873, Docket No. 03–077–1), we proposed, among other things, to reduce the approved irradiation dose for Mexican fruit fly to 70 gray, consistent with the commenter's recommendation. We are currently considering the comments received on that proposed rule and will finalize the 70 gray dose and the other proposed provisions of that document if our review of the comments leads us to conclude such action is appropriate.

The same commenter also pointed out that the addresses we provided in

§ 301.64–10 for the submission of cartons for approval and for the submission of requests for approval of an irradiation treatment facility and treatment protocol were out of date.

Those addresses were updated in another final rule that amended § 310.64–10, so the changes suggested by the commenter are no longer necessary.

Another commenter pointed out that, as written, the packaging and labeling requirements found in § 301.64–10(g)(3) would apply only to fruit treated within a quarantined area. The commenter stated that information relative to treatment verification and product origin must be provided regardless of where the treatment was conducted.

The packaging requirements of § 301.64–10(g)(3) are intended to prevent fruit flies from entering the cartons and ovipositing on the fruit after it has been treated and is being moved out of a treatment facility in a quarantined area. That same risk of oviposition would not be present if the treatment facility was located outside a quarantined area, *i.e.*, in an area where Mexican fruit fly was not present; in such instances, an inspector would ensure, through a compliance agreement, that safeguards were applied to prevent the escape of fruit flies from the fruit as it was being moved from the quarantined area into the non-quarantined area for treatment. With respect to the labeling requirements of paragraph (g)(3) as they apply to fruit treated outside a quarantined area, the same compliance agreement would provide that packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

In a third interim rule effective March 4, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11311–11313, Docket No. 02–129–3), we amended the regulations in § 301.64–3 by designating an additional portion of San Diego County, CA, as a quarantined area for Mexican fruit fly. This action was necessary to prevent the spread of the Mexican fruit fly to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending May 9, 2003. We received one comment by that date, from an individual. The commenter stated that the interim rule attempted to bypass the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) based on its designation of the spread of the Mexican fruit fly as an emergency situation and failed to take into consideration potentially more efficient methods of preventing the spread of the fruit fly (*e.g.*, pesticides).

In this case, the requirements of the Regulatory Flexibility Act were not bypassed, but simply deferred, consistent with the provisions of that act, due to the need to implement the quarantine and movement restrictions on an emergency basis in order to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. With respect to our consideration of alternatives such as pesticides, we note that the action taken in the interim rule was merely one aspect of a multifaceted State/Federal response to the Mexican fruit fly outbreak in San Diego County, CA. In addition to the designation of the quarantined area and the resulting restrictions on the movement of regulated articles, a variety of inspections, trapping and delimiting surveys, premises treatments, and other activities were undertaken to prevent Mexican fruit fly from spreading to noninfested areas and to ensure that the pest was eradicated from the quarantined area.

Noting that the regulations in §§ 301.64 and 301.64–5 provide that any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles, the commenter stated that there was ''a great risk of abuse of that authority.'' Because of that perceived risk, the commenter stated that there should be checks and balances on the authority of inspectors.

Given that the action taken in the March 2003 interim rule was limited to amending § 301.64–3 to designate of a portion of San Diego County, CA, as a quarantined area, we believe that this comment falls outside the scope of that rulemaking.

In a fourth interim rule effective October 22, 2003, and published in the **Federal Register** on October 28, 2003 (68 FR 61323–61324, Docket No. 02–129–4), we removed San Diego County, CA, from the list of quarantined areas and thus removed restrictions on the interstate movement of regulated articles from that area. That action was based on our determination that the Mexican fruit fly had been eradicated from San Diego County, CA, and was necessary to relieve restrictions that were no longer needed to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending December 29, 2003. We did not receive any comments.

Therefore, for the reasons given in the interim rules and in this document, we are adopting the February 2003 and October 2003 interim rules as a final rule without change.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule follows a series of interim rules that amended the Mexican fruit fly regulations by designating portions of San Diego County, CA, as quarantined areas, then subsequently removing those portions of the county from the list of quarantined areas. In another interim rule in that series, we provided for the use of irradiation as a treatment for fruits listed as regulated articles. In the October 2003 interim rule in which we removed those portions of San Diego County, CA, from the list of quarantined areas, we addressed the economic effects of the interim rules that dealt with quarantined areas. The following analysis examines the economic effects associated with the February 2003 interim rule adding irradiation as a treatment for regulated articles.

The small entities most likely to have been affected by our addition of irradiation as an approved treatment for fruits listed as regulated articles would be those entities that moved regulated articles interstate from the quarantined area. We expect that those entities would have benefited from the availability of an additional treatment alternative, especially in any case where irradiation treatment may have been less time-consuming or less expensive than the other treatment options available (cold treatment, methyl bromide fumigation, and high-temperature forced air).

We do not know how many producers or shippers availed themselves of the irradiation treatment option, but we have no evidence to suggest that the cost or time differential between irradiation and the other available treatment options is substantial enough to have had any significant economic effects for any entities, large or small.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rules that amended 7 CFR part 301 and that were published at 68 FR 8817–8820 on February 26, 2003, and 68 FR 61323–61324 on October 28, 2003.

Done in Washington, DC, this 26th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19575 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 050729210–5250–02]

RIN 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule; delay of effective date of certain provisions and extension of public comment period.

SUMMARY: On August 11, 2005, the Economic Development Administration (''EDA'') published an interim final rule in the **Federal Register**. This final rule delays the effective date of certain provisions in the interim final rule from October 1, 2005 until November 14, 2005. This final rule also extends the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. The delay in effective date and the extension of the public comment period are necessary to provide additional time for the submission of public comments and to allow for EDA's additional consideration of matters pertaining to the effective implementation of the interim final rule. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in the interim final rule.

DATES: The effective date of the following provisions of the interim final rule is delayed from October 1, 2005 until November 14, 2005: (i) Section 304.2(c)(2), pertaining to membership of a District Organization's governing body; and (ii) Section 301.4, as the provisions of this section relate to Investment Rates for EDA Planning Investments. The deadline for submitting public comments on the interim final rule is extended from 5 p.m. (e.s.t.) on October 11, 2005 until 5 p.m. (e.s.t.) on November 14, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION: EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (''PWEDA''), by the Economic Development Reauthorization Act of 2004 (Pub. L. 108–373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's current regulations (codified at 13 CFR Chapter III). The interim final rule also provides for a public comment period.

This final rule delays the effective date of the provisions specified above relating to EDA's Planning Investments, Investment Rates for Planning Investments, and District Organizations from October 1, 2005 until November 14, 2005. The effective date of all other provisions of the interim final rule remains October 1, 2005. This final rule also extends the deadline for submitting public comments on the entire interim final rule from 5 p.m. (e.s.t.) on October 11, 2005 until 5 p.m. (e.s.t.) on November 14, 2005. The procedure for filing public comments is set forth in the interim final rule and is not changed by this final rule. The delay in effective date and the extension of the public comment period are necessary to provide additional time for the submission of public comments and to allow for EDA's additional consideration of matters pertaining to the effective implementation of the interim final rule.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this final rule is not significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not ''major'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' It has been determined that this final rule does not contain policies that have federalism implications.

Dated: September 28, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

[FR Doc. 05–19705 Filed 9–29–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22413; Directorate Identifier 2005–NM–167–AD; Amendment 39–14271; AD 2005–19–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on September 15, 2005 (70 FR 54474). The error resulted in an inadvertent reference to a nonexistent paragraph. This AD applies to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This AD requires repetitive detailed and ultrasonic inspections of the thrust links of the rear engine mounts for any crack or fracture and corrective actions if necessary.

DATES: Effective September 30, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–22413; the directorate identifier for this docket is 2005–NM–167–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On September 6, 2005, the FAA issued AD 2005–19–06, amendment 39–14271 (70 FR 54474, September 15, 2005), for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes; equipped with Pratt & Whitney JT9D–3 and –7 series engines, except JT9D–70 engines. The AD requires repetitive detailed and ultrasonic inspections of the thrust links of the rear engine mounts for any crack or fracture and corrective actions if necessary.

As published, the requirements of paragraph (h)(1) of the AD inadvertently reference doing the repetitive replacements ''* * * at the applicable compliance time specified in paragraph (h)(1)(i) or (h)(2)(ii) of this AD.'' However, there is no paragraph (h)(2)(ii) in the AD. We have removed reference to paragraph (h)(2)(ii) and replaced it with the correct reference to paragraph (h)(1)(ii).

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 30, 2005.

§ 39.13 [Corrected]

■ In the **Federal Register** of September 15, 2005, on page 54476, in the third column, paragraph (h)(1) of AD 2005–19–06 is corrected to read as follows:

* * * * *

(1) Replace the cracked thrust link with a new or overhauled thrust link in accordance with Part 2 of the service bulletin; except as provided by paragraph (i) of this AD. Repeat the replacement at the applicable compliance time specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

* * * * *

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19564 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22405; Directorate Identifier 2002–NM–243–AD; Amendment 39–14269; AD 2005–19–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on September 14, 2005 (70 FR 54251). The error resulted in in an incorrect Docket No. This AD applies to certain Airbus Model A340–200 and –300 series airplanes. This AD requires revising the airplane flight manual to incorporate new procedures for the flightcrew to follow to correct miscalculation of the takeoff and accelerating or stopping distance of the airplane during a ferry flight under certain conditions.

DATES: Effective September 29, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–22405; the directorate identifier for this docket is 2002–NM–243–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On September 6, 2005, the FAA issued AD 2005–19–04, amendment 39–14269 (70 FR 54251, September 14, 2005), for certain Airbus Model A340–200 and –300 series airplanes. The AD requires revising the airplane flight manual to incorporate new procedures for the flightcrew to follow to correct miscalculation of the takeoff and accelerating or stopping distance of the airplane during a ferry flight under certain conditions.

As published, that AD specifies an incorrect Docket No. (*i.e.*, FAA–2005–20405) throughout preamble and the regulatory text of the AD. The correct Docket No. is FAA–2005–22405.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 29, 2005.

§ 39.13 [Corrected]

■ In the **Federal Register** of September 14, 2005, on page 54253, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES of AD 2005–19–04 is corrected to read as follows:

* * * * *

2005–19–04 Airbus: Amendment 39–14269. Docket No. FAA–2005–22405; Directorate Identifier 2002–NM–243–AD.

* * * * *

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19556 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22406; Directorate Identifier 2002–NM–242–AD; Amendment 39–14270; AD 2005–19–05]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on September 14, 2005 (70 FR 54249). The error resulted in an incorrect Docket No. This AD applies to certain Aerospatiale Model ATR42–500 airplanes. This AD requires inspecting for correct installation of the fastener that attaches the ground braids on the elevator, modifying the forward bonded assembly of the elevator control rod, and corrective action if necessary.

DATES: Effective September 29, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–22406; the directorate identifier for this docket is 2002–NM–242–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On September 6, 2005, the FAA issued AD 2005–19–05, amendment 39–14270 (70 FR 54249, September 14, 2005), for certain Aerospatiale Model ATR42–500 airplanes. This AD requires inspecting for correct installation of the fastener that attaches the ground braids on the elevator, modifying the forward bonded assembly of the elevator control rod, and corrective action if necessary.

As published, that AD specifies an incorrect Docket No. (*i.e.*, FAA–2005–20406) throughout preamble and the regulatory text of the AD. The correct Docket No. is FAA–2005–22406.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 29, 2005.

§ 39.13 [Corrected]

■ In the **Federal Register** of September 14, 2005, on page 54250, in the third column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES of AD 2005–19–05 is corrected to read as follows:

* * * * *

2005–19–05 Aerospatiale: Amendment 39–14270. Docket No. FAA–2005–22406; Directorate Identifier 2002–NM–242–AD.

* * * * *

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19555 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22404; Directorate Identifier 2005–NM–018–AD; Amendment 39–14268; AD 2005–19–03]

RIN 2120–AA64

Airworthiness Directives; BAe Systems (Operations) Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on September 13, 2005 (70 FR 53915). The error resulted in an incorrect Docket No. This AD applies to all BAe Systems (Operations) Limited Model ATP airplanes. This AD requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and new inspections to detect fatigue cracking in certain structures and of certain significant structural items, and to revise life limits for certain equipment and various components.

DATES: Effective September 28, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–22404; the directorate identifier for this docket is 2005–NM–018–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On September 6, 2005, the FAA issued AD 2005–19–03, amendment 39–14268 (70 FR 53915, September 13, 2005), for all BAe Systems (Operations) Limited Model ATP airplanes. The AD requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and new inspections to detect fatigue cracking in certain structures and of certain significant structural items, and to revise life limits for certain equipment and various components.

As published, that AD specifies an incorrect Docket No. (i.e., FAA–2005–20404) throughout preamble and the regulatory text of the AD. The correct Docket No. is FAA–2005–22404.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 28, 2005.

§ 39.13 [Corrected]

■ In the **Federal Register** of September 13, 2005, on page 53916, in the third column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES of AD 2005–19–03 is corrected to read as follows:

* * * * *

2005–19–03 BAe Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14268. Docket No. FAA–2005–22404; Directorate Identifier 2005–NM–018–AD.

* * * * *

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19554 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

National Marine Sanctuary Program Policy on Permit Applications for Artificial Reef Development

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Policy statement; response to comments.

SUMMARY: The National Marine Sanctuary Program (NMSP) has developed a final policy and permitting guidelines for applications to establish artificial reefs within National Marine Sanctuaries. The NMSP is releasing its final policy and permitting guidelines, and responding to comments on the interim final policy.

DATES: This notice is effective as a final policy as of September 30, 2005.

ADDRESSES: You can download a copy of the final policy from the NMSP's Web site at *http://sanctuaries.nos.noaa.gov/library/library.html.* You may also request a copy of the NMSP's final policy on artificial reefs and submit written comments on the policy by contacting John Armor, National Marine Sanctuary Program, 1305 East West Highway (N/ORM6), 11th floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John Armor at (301) 713–3125.

SUPPLEMENTARY INFORMATION:

Background

The National Marine Sanctuary Program (NMSP) manages a system of thirteen National Marine Sanctuaries (NMSs or Sanctuaries) and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve that protect special, nationally significant areas of the marine environment under the authority of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*). Sanctuaries protect a variety of marine areas including coral reefs, mangrove forests, and seagrass beds in the Florida Keys National Marine Sanctuary; deep-sea canyons, kelp beds, and hardbottom habitats in the Monterey Bay National Marine Sanctuary; and historic shipwrecks in the Thunder Bay National Marine Sanctuary and Underwater Preserve.

In the last few years the NMSP has experienced an increased number of permit applications to establish artificial reefs inside NMS boundaries, particularly in the Florida Keys National Marine Sanctuary. Because NMSP regulations generally prohibit placing structures on sanctuary submerged lands, any individual who wishes to establish an artificial reef inside a NMS must first get approval from the NMSP through the onsite sanctuary manager.

To ensure that applications to establish artificial reefs in sanctuaries are reviewed consistently and in a manner that adheres to the NMSA and NMSP regulations (15 CFR Part 922), the NMSP developed permitting guidelines specific for such applications. The guidelines build on lessons learned from past experience permitting artificial reefs within sanctuaries and apply knowledge from other sources of information. They are intended to guide decision makers as they review proposals for artificial reefs in sanctuaries. They clarify how decision making criteria contained in NMSP regulations will be applied specifically to permit applications for artificial reef development.

Response to Comments

On July 18, 2003, NOAA published a notice of availability of the NMSP's Artificial Reef Policy and Permitting Guidelines in the **Federal Register** (68 FR 42690, Jul. 18, 2003). The policy and permitting guidelines have been implemented on an interim-final basis since that date. NOAA also requested comments on the policy and permitting guidelines through September 16, 2003. The following are NOAA's responses to the comments received.

Comment 1. Many commenters felt that the policy prohibited or was overly restrictive of artificial reef development within national marine sanctuaries.

Response: NOAA disagrees. The NMSP's regulations prohibit artificial reef development in NMSs by prohibiting the placement of structures on the submerged lands. This policy creates a framework to allow artificial reefs under specific conditions (*i.e.*, when a project is expected to benefit NMS management and would not have a detrimental effect on NMS resources). The policy applies higher standards of resource protection to artificial reef projects within NMSs than would apply to projects outside NMSs or other protected areas. More protective requirements are appropriate given the nature and purpose of the NMSs.

Comment 2. Several commenters suggested expanding the policy or definition of artificial reefs to address specific issues, such as coral reef restoration and reef balls.

Response: The primary purpose of the policy is to guide decision making related to placement of artificial reefs within the Sanctuary System. The policy is intended to apply to all types of artificial reef projects, and not to direct the policy to a specific type of artificial reef. The policy appropriately and specifically excludes natural reef restoration projects from application of this policy because such projects are addressed by the NMSP in a much different manner.

Comment 3. A few commenters felt that artificial reefs should not be placed in sanctuaries under any circumstances.

Response: See response to comment number 1.

Comment 4. A few commenters stated that all or part of the policy conflicted with the National Fishing Enhancement Act of 1984 (NFEA).

Response: NOAA disagrees. While the NFEA encourages artificial reef development it does not, under any circumstance, require their use. Any regulatory or statutory requirement that prohibits or imposes more restrictive requirements on artificial reef development is not in direct conflict with that statute. The NMSP's artificial reef policy is written pursuant to the NMSA and the regulations promulgated thereunder. Because the primary objective of the NMSA is resource protection, it is entirely appropriate that the NMSP's policy be more protective than the policy applicable to non-sanctuary waters under the NFEA.

Comment 5. Some commenters felt that the NMSP's policy imposes more burdens on an applicant than the requirements of the National Artificial Reef Plan (NARP).

Response: NOAA agrees. The policy does exceed the requirements of the NARP in several respects including the types of monitoring and insurance required. As discussed in the response to comment number 4, these more stringent requirements are consistent with the purposes and policies of the NMSA and are appropriate for NMSs.

Comment 6. One commenter suggested that the section on the definition of an artificial reef should refer to applying the policy to oil rigs and existing structures that may end up being used as artificial reefs in the future.

Response: NOAA does not feel abandoning existing oil rigs would qualify as artificia1 reef development within a NMS as it is defined in the NMSP policy, because the policy is not meant to address the abandonment of existing structures inside NMSs. If presented with an application to abandon an oil rig inside a NMS, the NMSP would use certain aspects of its artificial reef policy during its review of such a proposal, if appropriate.

Comment 7. Several commenters provided information about artificial reefs they felt should be included or in some manner referenced in the policy.

Response: NOAA appreciates the additional information provided by some commenters. However, none of it necessitated changes in the procedures for reviewing permit applications for artificial reef development in NMSs.

Comment 8. One commenter asked if a complete proposal submitted to the NMSP would have to include a U.S. Army Corps of Engineers (ACOE) or relevant state permits. The commenter also asked if the NMSP would review and approve a proposal before those permits are obtained.

Response: NOAA will begin reviewing permit applications to establish artificial reefs inside NMSs prior to the issuance of an ACOE or required state permit. During this review period, the NMSP will confer with all tribal, local, State, and Federal agencies with jurisdiction. The NMSP will not take final action on any such permit until it understands the positions of all relevant agencies. Nothing in the policy or in the NMSP regulations, however, precludes the NMSP from issuing its permit prior to the permittee receiving other required permits.

Comment 9. One commenter requested that the diagram illustrating the review process indicate that public review of the application would occur before a decision would be made.

Response: The public review process is sufficiently represented in the National Environmental Policy act process on the diagram. As stated in section 2.4.1 of the policy (page 15), the NMSP will prepare a draft environmental assessment or impact statement and will release the document for public comment prior to making a final decision on the application.

Comment 10. One commenter requested an independent assessment, inspection, or certification of material proposed to be used in artificial reef development to ensure contaminant risk has been adequately researched and minimized.

Response: NOAA agrees that these types of assessments are appropriate, particularly for artificial reef projects using an obsolete vessel as the material. The Environmental Protection Agency and/or United States Coast Guard inspect and certify vessels proposed to be deployed as artificial reefs. However, such an assessment might not be necessary for artificial reef projects using other types of material. Therefore, NOAA does not feel independent inspection will be necessary in all cases.

Comment 11. One commenter wanted an independent assessment of the deployment and stabilization plan for each permit.

Response: The NMS manager or superintendent and other NMSP staff will review every permit application (including the deployment and stabilization plans) for artificial reef development within NMS boundaries. The NMSP's assessment is independent of the permit applicant's. In some cases NMSP may obtain outside expertise to assist in its assessment.

Comment 12. One commenter felt that the NMSP should not put itself in a sponsorship or permittee role for any artificial reef project.

Response: As a permitting agency, the NMSP will not sponsor any artificial reef project for which it is processing a permit application or expects to receive a permit application in the future. The NMSP will also not co-apply for any such permit.

Comment 13. One commenter wanted clarification as to why NOAA would consider an applicant eligible for a permit and allow him/her to go through the effort of submitting a proposal, knowing that NOAA was not going to approve the request?

Response: The NMSP's permitting process does not prevent an applicant from submitting an application to conduct activities within sanctuaries. After receiving and reviewing an application, the NMSP will decide whether or not to approve the activity. Based on the nature, scope, and complexity of the proposal, the review process and need for additional information may vary. In some cases, it may be possible for the NMSP to dismiss an application without asking for additional information from the applicant. In others, the NMSP may need this additional information to make a final determination.

Comment 14. One commenter stated that NMSP should require copies of data and reports, and that the projects should make management recommendations with justifications.

Response: The NMSP has monitoring and reporting components described within the policy. The NMSP will assess results and make adjustments to management practices when warranted by information obtained from the monitoring reports.

Comment 15. One commenter felt that the policy should allow for involvement of all stakeholders and that it should not have special provisions for Native American tribes.

Response: Special provisions related to Native American Tribes are warranted in circumstances such as when tribal treaty rights or NMSP regulations provide involvement of tribes in permit decisionmaking. In general this only applies to the Olympic Coast National Marine Sanctuary but will be considered on a case-by-case basis for other NMSs.

Comment 16. One commenter was concerned that the section in the policy on ''Authorizations'' was the weakest. They felt the process described in this section was a means to circumvent requirements of NMSA and that proposals should still be held to the same regulations, including enhancing resources.

Response: The NMSP reviews artificial reef projects with the same level of scrutiny, whether they are being considered under authorizations or other forms of approval.

Comment 17. One commenter did not agree with the five-year duration for special use permits.

Response: The five-year duration for special use permits is mandated by the NMSA. When a special use permit is issued, the permit cannot be issued for a period longer than five years, but may be renewed.

Comment 18. One commenter wanted clarification on what type of monitoring NOAA was referring to in the section of the policy that describes evaluating the effects of a project.

Response: NOAA was referring to all forms of monitoring required under a permit and described in section 2.2.2 (page 10) of the policy.

Comment 19. One commenter questioned why NOAA was requiring the permittee to prove that there are funds available to remove the reef if something goes wrong.

Response: NOAA was primarily referring to problems encountered during installation. In the event of a problem, NOAA must be certain the applicant has funds to ensure there will be no damage to NMS resources, which may include removal of the artificial reef. Additionally, should pieces separate from the main structure of the artificial reef, NOAA may require the permittee to remove them from the Sanctuary.

Comment 20. One commenter wanted to know if bonds would be retroactive

to cover materials already in the Florida Keys NMS (FKNMS).

Response: Bonds will not be required retroactively for preexisting materials within the Sanctuary.

Comment 21. One commenter wanted to know how long the NMSP considered to be the life of a project.

Response: The duration of a project is as long as the artificial reef is within the Sanctuary.

Comment 22. Some commenters felt that it is difficult to obtain a bond for monitoring.

Response: A bond is not necessarily the only way to demonstrate that an applicant has financial resources available. When discussing the issue of obtaining a bond for monitoring purposes, the policy is referring to the permittee providing some form of financial security. If a bond is not a practical form of financial security, the permittee may find another method. The policy has been revised to better express this point.

Comment 23. One commenter expressed concerns about an artificial reef releasing toxic materials or other pollutants into the water after it is placed on the bottom. The commenter suggested that the policy should address the issue more directly.

Response: The NMSP agrees artificial reefs placed inside NMSs must not release into the water pollutants of any kind that have the potential to adversely affect sanctuary resources. This issue is discussed in Appendix B to the guidelines as an issue that the NMSP should consider when reviewing applications to establish artificial reefs. Furthermore, potential pollutants must be disclosed in the permit application as specified in Appendix C. The NMSP will consult with the Environmental Protection Agency to consider this information and to assess the impacts it would have on sanctuary resources.

Comment 24: Several comments were received on how NOAA will evaluate the effects of removal of an artificial reef.

Response: If an artificial reef is not permanent and NOAA requires removal as part of the project, the effects of that removal process will be evaluated before a permit is issued. NOAA may also conduct a supplemental analysis immediately prior to removal of the artificial reef to consider whether removal is inappropriate.

Comment 25. One commenter felt that Executive Order 13089 on Coral Reef Protection should have been included in the NEPA Documentation and Interagency Consultation section of the policy.

Response: The policy applies to all NMSs (most of which do not have coral reef resources). Therefore, Executive Order 13089 will not apply to every artificial reef proposal for every NMS. When the requirements of Executive Order 13089 apply to a proposed artificial reef development project, the NMSP will take the required steps to ensure the Executive Order is followed.

Comment 26. One commenter thought that the NMSP should provide an analysis of each alternative that the applicant is allowed to pursue under the National Environmental Policy Act (NEPA).

Response: As indicated in Appendix C to the policy, a permit application to establish an artificial reef in a NMS must include all information necessary for the NMSP to prepare the appropriate NEPA documentation. In determining the completeness of the permit application, the NMSP will ensure the applicant has submitted sufficient information to fully analyze the full range of reasonable alternatives as required by NEPA and its implementing regulations.

Comment 27. One commenter pointed out that the NMSP does not have to prepare and release a draft NEPA analysis document for public comment for artificial reef projects that do not require the preparation of an environmental impact statement.

Response: Section 5.02(b)(1) of NOAA Administrative Order 216–6 encourages NOAA programs to release a draft environmental assessment to the public to the extent possible. NOAA realizes that this action is not required under NEPA, but has determined that it is appropriate in cases involving the establishment of artificial reefs in NMSs.

Comment 28. One commenter wanted the policy to recognize that artificial reefs may be beneficial for Essential Fish Habitat (EFH).

Response: It is not the role of the NMSP to artificially create new EFH (as defined in the Magnuson-Stevens Fishery Conservation and Management Act). The NMSP, in consultation with NOAA Fisheries, will consider the extent that any proposed artificial reef may adversely affect EFH that naturally occurs in the vicinity of the project.

Comment 29. One commenter suggested that biological monitoring be specifically included in the monitoring requirements.

Response: In general, some form of biological monitoring will always be required although the exact monitoring requirements (*e.g.*, parameters to be studied, frequency of data collection) will vary from permit to permit.

Comment 30. One commenter felt that the monitoring of a reef and the placement of a reef are separate projects and should have separate proposals.

Response: NOAA disagrees. Monitoring is an integral part of proposing to place an artificial reef within a NMS. A permittee should not propose to establish an artificial reef inside a NMS unless they are prepared to collect quantifiable monitoring data and have sufficient resources to do so. As discussed in section 2.5.1.1. there are several different types of monitoring that would be part of any artificial reef project. Some will be designed to determine the effectiveness of the artificial reef project in meeting goals and providing benefits to the Sanctuary. Other forms of monitoring will be designed to determine the effects of the project on the resources of the Sanctuary.

Comment 31. One commenter did not agree with the discussion regarding lifetime monitoring.

Response: Stability monitoring will be conducted as long as the artificial reef is in NMS waters. Other forms of monitoring may vary in length depending on the expected life of the project, the questions the monitoring is designed to answer, and other factors.

Comment 32. Some commenters inquired as to what would happen if a permittee were to withdraw from the permitting agreement. Inquiries were also made on how permits will be enforced.

Response: Before the NMSP issues a permit, it must be satisfied that the applicant has sufficient resources to comply with all permit terms and conditions, including the funding of long-term monitoring. The nature of this assurance will vary from permit to permit and is detailed in the policy.

A permittee cannot unilaterally withdraw from a permit agreement without violating the permit or NMSP regulations. If a permittee violates a term or condition of his/her permit, the permittee is subject to possible civil penalties under the NMSA.

Comment 33. Some comments questioned the types of building materials that would be approved in a potential artificial reef permit.

Response: NOAA regulations do not currently discriminate among materials. The policy gives guidance on which materials are better than others. NOAA will consult with the United States Army Corps of Engineers, Environmental Protection Agency, and relevant state agencies on a case-by-case basis to ensure that hazardous materials are not used. Compliance with a sanctuary permit does not necessarily

relieve the permittee of his/her obligation to comply with all other applicable Federal, State, and local laws.

Dated: September 23, 2005.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 05–19502 Filed 9–29–05; 8:45 am]

BILLING CODE 3510–NK–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–8612; 34–52477; 35–28033; 39–2439; IC–27070]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect changes made to improve, reorganize and restructure the EDGAR Filer Manual volumes to make it easier for filers and those wishing to apply for EDGAR access codes to locate the information that they need to apply for EDGAR access, maintain company information and submit a filing. With this reorganization, no changes have been made to the filing process.

The revisions to the Filer Manual reflect changes within Volumes I, II and III, entitled ''EDGAR Filer Manual Volume I General Information,'' ''EDGAR Filer Manual Volume II EDGAR Filing,'' and ''EDGAR Filer Manual Volume III N–SAR Supplement'' respectively. The updated manual will be incorporated by reference into the Code of Federal Regulations.

EFFECTIVE DATE: October 14, 2005. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of October 14, 2005.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux, at (202) 551–8800; for questions concerning the Division of Corporation Finance filings, in the Division of Corporation Finance, Herbert Scholl, Office Chief, EDGAR and Information Analysis, at (202) 942–2940; for questions concerning the Division of Investment Management filings, in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, at (202) 551–6989; and, in the Office of Filings and Information Services, Velma Smith, at (202) 942–8900.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (Filer Manual). The Filer Manual describes how to become an EDGAR filer and the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink [2] and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

The revisions to the EDGAR Filer Manual volumes are being made to improve, reorganize and restructure the EDGAR Filer Manual volumes to make it easier for filers, and those wishing to apply for EDGAR access codes, to locate the information that they need to apply for EDGAR access, maintain company information and submit electronic filings. The EDGAR Filer Manual has also been rearranged to eliminate information that was repeated between the different volumes and to be more aligned with the logical functions performed by EDGAR users. The reorganized filer manual does not include any changes to the filing process.

The EDGAR Filer Manual Volume I General Information covers the EDGAR application process, outlines how to keep company data, which is stored in EDGAR, current and provides a brief introduction to the filing process. The appendices in this volume, as well as those that are a part of the other volumes, ''Glossary of Commonly Used Terms, Acronyms, and Abbreviations'' and ''Frequently Asked Questions'' for example, only contain information specific to the processes and concepts covered within the volume. The appendices are no longer repeated in each volume. Volume I is intended to be a reference for those that need to obtain EDGAR access, those that are new to EDGAR and those that are responsible for keeping company information current.

The EDGAR Filer Manual Volume II EDGAR Filing focuses entirely on the filing process. It illustrates each step of the process to submit an electronic submission and helps filers understand the tools provided by the SEC for constructing and transmitting those submissions, concisely consolidating information previously provided in the former EDGAR Release 9.0 EDGARLink Filer Manual Volume I and EDGAR Release 9.0 OnlineForms Filer Manual Volume III. It also provides a much improved Index to Forms which, in addition to the Submission Type and Description, adds the name of the tool (*e.g.*, EDGARLink or Online Forms/XML Web site), the template number that contains that particular submission type and the Filer Constructed Form Specification (formerly known as ''Reduced Content Filing Specification'') that should be used by those that

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on June 6, 2005. *See* Release No. 33–8573 (May 19, 2005) [70 FR 30899].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14848], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33–7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33–7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33–8007 (September 24, 2001) [66 FR 49829], in which we implemented EDGAR Release 8.0; Release No. 33–8224 (April 30, 2003) [66 FR 24345], in which we implemented EDGAR Release 8.5; Release Nos. 33–8255 (July 22, 2003) [68 FR 44876] and 33–8255A (September 4, 2003) [68 FR 53289] in which we implemented EDGAR Release 8.6; Release No. 33–8409 (April 19, 2004) [69 FR 21954] in which we implemented EDGAR Release 8.7; Release No. 33–8454 (August 6, 2004) [69 FR 49803] in which we implemented EDGAR Release 8.8; Release No. 33–8528 (February 3, 2005) [70 FR 6573] in which we implemented EDGAR Release 8.10; and Release No. 33–8573 (May 19, 2005) [70 FR 30899] in which we implemented EDGAR Release 9.0.

prepare filings without using EDGARLink or the OnlineForms/XML Web site. The Index to Forms is provided in alphanumeric order, which can be used by those that only know the submission type, as well as by Act. This volume is intended to be a reference for those that are responsible for submitting filings to the SEC via the EDGAR system.

The EDGAR Filer Manual Volume III N–SAR Supplement is the guide for preparing the electronic submissions of Form N–SAR. While this volume used to be Volume II of the EDGAR Filer Manual, its current content has remained essentially unchanged with the exception of the minor modifications necessary to update references to the other updated Filer Manual volumes.

Prior to the reorganization of the EDGAR Filer Manual, the version numbers assigned to each volume were based upon the EDGAR release number in which it was implemented. As of this revised Filer Manual, each volume will be baselined at Version One and will no longer follow the EDGAR release numbers. This will prevent the need to make changes to the EDGAR Filer Manual volumes simply to update the EDGAR release when none of the other content has been changed. The EDGAR Filer Manual volumes will only be updated when changes are made to the functions contained within a particular volume. Filers should consult the SEC's Public Web site, EDGAR Filing Web site or the EDGAR OnlineForms/XML Web site to determine the current version of the software or documents.

The SEC maintains a number of Web sites and URLs to support the filing process. As more sites and URLs have been developed, it has become more complicated for filers to find the correct site for a single function. To give filers a central location from which they can navigate to the EDGAR Web site that they need to access rather than having to remember the different URLs to each of the EDGAR Filing Web sites, we created an EDGAR Gateway Web site that can be reached at the following URL: *https://www.portal.edgarfiling.sec.gov.* The use of the new EDGAR Gateway Web site is optional. The existing EDGAR Filer Management, EDGAR Filing and EDGAR OnlineForms/XML Web sites can still be accessed as they have previously. The EDGAR Gateway Web site is expected to be available on or about September 26, 2005.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1580, Washington DC 20549. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You may also obtain copies from Thomson Financial, the paper document contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act.[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is fourteen (14) days after publication in the **Federal Register**. Because the changes made to reorganize the Filer Manual were made solely for the purposes of clarity and do not change the filing process, we find that there is good cause to establish an effective date less than 30 days after publication of these rules.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 20 of the Public Utility Holding Company Act of 1935,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[11]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[9] 15 U.S.C. 79t.

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

PART 232—REGULATION S–T GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 1 (September 2005). The requirements for filing on EDGAR are set forth in the EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 1 (September 2005). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1580, Washington, DC 20549 or by calling Thomson Financial at (800) 638–8241. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also photocopy the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: September 21, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–19315 Filed 9–29–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF21

Reinstatement of Entitlement to Disability Benefits

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are publishing final rules regarding the Reinstatement of Entitlement (Expedited Reinstatement) provision in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999. This provision allows former Social Security disability and Supplemental Security Income (SSI) disability or blindness beneficiaries, whose entitlement or eligibility had been terminated due to their work activity, to have their entitlement or eligibility reinstated in a timely fashion if they become unable to do substantial gainful work. These rules provide beneficiaries an additional incentive to return to work.

DATES: Effective Date: These final rules are effective on October 31, 2005.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.socialsecurity.gov/regulations/.*

FOR FURTHER INFORMATION CONTACT: John Nelson, Team Leader, Employment Policy Team, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Room 128 Altmeyer Building, Baltimore, Maryland 21235–6401, (410) 966–5114 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–(800) 772–1213 or TTY 1–(800) 325–0778, or visit our Internet web site, Social Security Online, at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

Background

The expedited reinstatement provision, along with other work incentives and the Ticket to Work program contained in the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170) is intended to expand your options as a Social Security disability beneficiary or a disabled or blind Supplemental Security Income recipient. We expect that the expedited reinstatement provision along with other provisions in the Ticket to Work and Work Incentives Improvement Act of 1999 will remove some of the disincentives that may discourage you from either attempting to work or increasing your work activity. If more beneficiaries with disabilities engage in self-supporting work, the net result will be an increase in the independence of disabled beneficiaries, a reduction in the Social Security and Supplemental Security Income disability rolls, and savings to the Social Security Trust Fund and general revenues.

General Goals of the Expedited Reinstatement Provision

The expedited reinstatement provision is intended to relieve some concerns you may have about returning to work. If we terminate your entitlement or eligibility for benefits due to your work activity, this provision provides you an easier way to have your entitlement or eligibility reinstated and to be placed back into payment status. This process should ease some concerns you may have about what will happen if your attempt to return to work is unsuccessful.

Advice of the Ticket to Work and Work Incentives Advisory Panel

During the preparation of these final rules, we consulted with the Ticket to Work and Work Incentives Advisory Panel. The Ticket to Work and Work Incentives Advisory Panel was established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999. This panel advises the President, the Congress, and us on issues related to work incentive programs, planning and assistance for individuals with disabilities and the Ticket to Work Program established under this Act.

Section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999

Congress indicated that the purpose of section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999 (the expedited reinstatement provision) was to encourage disability beneficiaries to return to work by reassuring them that if they meet our disability standards their benefits would be restored in a timely fashion should they become unable to continue working.

The expedited reinstatement provision provides a method for you to have your disability benefits reinstated without filing an application if you have had your entitlement to, or eligibility for, benefits terminated due to your work activity during the previous 5 years, and you can no longer do substantial gainful activity.

Effect of the Expedited Reinstatement Provision

The expedited reinstatement provision provides you another option for regaining entitlement to benefits under title II and eligibility under title XVI of the Act after we have terminated your entitlement to or eligibility for disability benefits due to your work activity. If you file a request for expedited reinstatement, you can still file a new application for benefits under existing initial claim rules.

Prior to the effective date of this provision, when we terminated your entitlement or eligibility due to work activity, you were required to file a new application to become entitled to or eligible for benefits again. We processed your application under rules that required a new disability determination using the medical requirements that we apply when you file an initial claim for benefits. You generally were entitled to receive benefits only after we processed your entitlement or eligibility determination. If we determined that you again qualified for benefits, you became eligible for work incentives such as the trial work period, the reentitlement period, and special SSI eligibility status under your new period of disability.

The expedited reinstatement provision provides you the option of requesting that your prior entitlement to or eligibility for disability benefits be reinstated, rather than filing a new application for a new period of entitlement or eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. At the time you request reinstatement, you must be unable to engage in substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard that we use in our continuing disability review process. Under the medical improvement review standard, we will generally find that you are disabled,

unless there is substantial evidence demonstrating that there has been medical improvement in your impairment(s) and the improvement is related to your ability to work.

When you request reinstatement you can be paid up to 6 months of provisional benefits, and may be entitled to Medicare benefits or Medicaid, while we are deciding whether you qualify for reinstatement. Provisional benefits, or payments, are cash benefits that can be paid to you on a temporary basis when you were previously a Social Security (title II) disability beneficiary or a disabled or blind Supplemental Security Income (title XVI) recipient and you are now requesting reinstatement. The period during which you can receive provisional benefits is your provisional benefit period. This period begins with the first month you can receive provisional benefits and can never extend beyond six consecutive months. Your provisional benefit period will end earlier than the sixth consecutive month if we make our determination on your request for reinstatement before that month. Your title II provisional benefit period will also end if you attain full retirement age or if you do substantial gainful work activity.

You can receive title II provisional benefits beginning with the month you file your request for reinstatement. We will base your provisional benefit amount (*i.e.*, the amount of the monthly cash benefit you receive during the provisional benefit period) on the prior benefit amount that was actually payable to you under title II. We will terminate your title II provisional benefits when your provisional benefit period ends, such as if you do substantial gainful activity. You can receive title XVI provisional payments beginning with the month after you file your request for reinstatement. We will base your title XVI provisional benefit amount (*i.e.*, the amount of the monthly cash payment you receive during the provisional benefit period) on the Federal Supplemental Security Income benefit that would actually be payable to you for each month in the provisional benefit period, depending on your income. We will terminate your title XVI provisional payments when your provisional benefit period ends. If you have previously received provisional benefits based upon a prior request for reinstatement, you cannot receive additional provisional benefits if you file a second request for reinstatement based on the same prior entitlement or eligibility. This could occur, for example, if we denied your prior request for reinstatement and then you subsequently file a new request for reinstatement because you believe you meet the requirements.

We are also amending §§ 404.903 and 416.1403 to indicate, consistent with the expedited reinstatement legislation, that the determination we make regarding your right to receive provisional benefits is not an initial determination and it is, therefore, not subject to administrative review under subpart J of part 404 and subpart N of part 416.

If we deny your request for reinstatement, we generally will not consider the provisional benefits you received as an overpayment. If your reinstatement request is denied, and you have not filed a new benefits application, we will treat that request as your intent to file an initial application for benefits. If we approve your request for reinstatement, we will reinstate your prior disability entitlement or eligibility and reestablish your Medicare/Medicaid entitlement, as appropriate, if you are not already entitled to Medicare/Medicaid. We will pay you reinstated benefits under title XVI beginning with the month after the month in which you file your request. We will pay you reinstated benefits under title II beginning no later than the month in which you file your request. We can pay you title II reinstated benefits for any of the 12 months preceding your request for reinstatement if you would have met all of the requirements for reinstatement had you requested reinstatement in that month. We will reduce reinstated benefits payable for a month by the amount of any provisional benefits that you already received for that month.

When we reinstate your entitlement under this provision, you are then entitled to a 24-month initial reinstatement period. Your 24-month initial reinstatement period begins with the month your benefits are reinstated and ends with the 24th month that you have a benefit payable. For title II purposes, we consider a benefit to be payable in a month when you do not do substantial gainful activity and the non-payment provisions in subpart E of part 404 do not apply. For title XVI purposes, we consider a benefit to be payable in a month when, using normal payment calculation procedures in subpart D of part 416, we determine you are due a monthly payment, or you are considered to be receiving SSI benefits in a month under section 1619(b) of the Act. After the 24-month initial reinstatement period is completed, you are eligible for additional work incentives under title II (such as a trial work period and a reentitlement period), as well as possible future reinstatement through the expedited reinstatement provision under title II and title XVI.

Notice of Proposed Rulemaking

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 27, 2003 (68 FR 61162), which proposed rules regarding the expedited reinstatement provision of the Act. We provided a 60-day period for the public to comment. We subsequently extended the comment period to January 16, 2004 (69 FR 307 (2004)). We received comments from 72 commenters. We discuss the significant public comments we received on the NPRM and provide our responses to those comments later in this preamble under ''Public Comments on the Notice of Proposed Rulemaking.'' As we explain below under ''*Explanation of Changes to Regulations*,'' in these final rules we are making some changes from the proposed rules in response to these public comments.

Explanation of Changes to Regulations

We are amending our regulations to provide the rules for expedited reinstatement. These rules add §§ 404.1592b through 404.1592f to part 404 and §§ 416.999 through 416.999d to part 416.

Part 404

Section 404.1592b provides a general overview of expedited reinstatement and summarizes the basic requirements for expedited reinstatement, as discussed in §§ 404.1592c through 404.1592f. In response to public comments, we have revised the requirement in the NPRM that you must have stopped doing substantial gainful activity because of your medical condition to instead provide that you must be unable to do substantial gainful activity because of your medical condition. In these final rules we also revised the proposed reference in the last sentence of this section from § 404.1592g to § 404.1592f because we deleted proposed § 404.1592e.

Section 404.1592c describes the requirements for reinstatement to title II benefits. Section 223(i)(1) of the Act lists the requirements you must meet to have your entitlement reinstated under the title II expedited reinstatement provision. These rules explain that you must have previously been entitled as a disabled insured individual, a disabled child, a disabled widow or widower, or a disabled Medicare qualified government employee. We must have terminated your prior entitlement due to your doing substantial gainful activity. You must be unable to do substantial gainful activity due to your medical

condition. Your current impairment must be the same as or related to the impairment on which we based your prior period of disability, and you must currently be disabled. Section 223(i)(3) of the Act requires us to use the medical improvement review standard in section 223(f) of the Act when we determine if you are disabled for the purposes of this provision. If your entitlement is reinstated, an auxiliary beneficiary who was previously entitled on your record can also be reinstated. The auxiliary beneficiary must request reinstatement and must meet the current entitlement factors for the benefit.

In response to public comments, we are not requiring in these final rules that you stopped working due to your medical condition. However, as required under section 223(i)(1)(B)(iii) of the Act, these final rules provide that you must be unable to do substantial gainful activity because of your medical condition. We will determine that you meet the requirement that you are unable to do substantial gainful activity due to your medical condition when:

(1) You file, under § 404.1592d, your request for reinstatement stating that you are unable do substantial gainful activity due to your medical condition,

(2) You do not do substantial gainful activity in the month you file your request for reinstatement, and

(3) We determine that you are under a disability, based on the application of the medical improvement review standard, as required by § 404.1592c(a)(4).

We believe this more closely follows the requirement in section 223(i)(1)(B)(iii) of the Social Security Act and removes a possible disincentive for you to return to work.

In response to public comments, in these final rules we also deleted proposed § 404.1592c(b) and redesignated proposed § 404.1592c(c) to § 404.1592c(b). We made these changes from the proposed rules so that you may be able to make a second request for reinstatement of entitlement. Therefore, for example, if your request for expedited reinstatement is denied because we either determine that your current impairment is not the same as or related to the impairment that we used as the basis for your previous entitlement or eligibility, or that you are not disabled, you may be able to be reinstated on a later request for reinstatement provided you meet the requirements in § 404.1592c at that time. However, as we explain in § 404.1592e, in these final rules we have added that you cannot be paid additional provisional benefits based on the subsequent request if you received provisional benefits based on the first request. By deleting proposed § 404.1592c(b), these final rules now provide that you may be able to be reinstated on your request for reinstatement even if, after your prior entitlement had been terminated because of the performance of substantial gainful activity, we had made an intervening determination that you were no longer disabled under the medical improvement review standard because we conducted a continuing disability review on a disability entitlement or a medical review on your Medicare entitlement. We believe these changes make expedited reinstatement more responsive to your needs, while maintaining the integrity of the program.

Section 404.1592d describes how to request reinstatement of benefits under the expedited reinstatement provision. Your request must be made in writing. Section 223(i)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that we terminated your prior entitlement to disability benefits due to the performance of substantial gainful activity. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month time period. Your request must state that you are disabled, that your current impairment is the same as or related to the impairment that was used as the basis for your prior disability entitlement, and that you cannot do substantial gainful activity because of your medical condition. Your request must also include the information we need to help us determine whether you meet the non-medical factors of entitlement for the benefit and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001. In response to public comments, in these final rules we changed the proposed rule in § 404.1592d(d)(2) which stated that you must certify that you became unable to continue to do substantial gainful activity because of your medical condition. These final rules have been revised to require that you certify that you cannot do substantial gainful activity due to your medical condition. This change is necessary due to our decision to delete the proposed § 404.1592e.

In response to public comments, we deleted the proposed § 404.1592e as these final rules do not require that you stopped working (or reduced your work and earnings below the substantial gainful activity level) because of your impairment. Therefore, the proposed § 404.1592e is no longer necessary. As a result of this deletion, we changed §§ 404.1592f and 404.1592g in the proposed rules to § 404.1592e and § 404.1592f, respectively, in these final rules.

Section 404.1592e now provides information on when your title II provisional benefits start, how they are computed, when they are paid, and when they end. Section 223(i)(7) of the Act lists the requirements for us to pay provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, these rules explain that we can pay you up to 6 months of provisional benefits during your provisional benefit period. In addition, if you are not already entitled to Medicare, we can reestablish your Medicare entitlement during your provisional benefit period. Your entitlement to provisional benefits begins with the month your reinstatement request is filed. We will base your provisional benefit amount on your monthly insurance benefit that was actually payable to you at the time we terminated your prior entitlement. We will increase your prior benefit amount payable by any intervening cost of living increases that would have been applicable to the prior benefit amount under section 215(i) of the Act. If you are entitled to another title II benefit or another provisional benefit, the maximum benefit amount we will pay you when all benefits are combined will be the amount of your highest computed benefit. If you request reinstatement as a disabled widow or widower or a disabled child, we will not reduce your provisional benefit, or the payable benefits to other individuals entitled at that time on the same record when your provisional benefit causes the total benefits payable on the record to exceed the family maximum.

Based on revisions to the proposed rules that we are making in response to public comments, these final rules provide that if you have previously received provisional benefits based upon a prior request for reinstatement, you cannot receive a second period of provisional benefits if you file a second request for reinstatement based on the same prior entitlement. In addition, as already provided in the proposed rules, we will not pay you provisional benefits for a month if you are not entitled to

payment for the month under our usual rules, such as if you are a prisoner. We also will not pay you provisional benefits for any month that is after the earliest of the following months: the month we send you notice of our determination on your request for reinstatement; the first month you do substantial gainful activity; the month before you attain retirement age; or the fifth month following the month you filed your request for reinstatement. You are not entitled to provisional benefits if, prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement such as when: we determine that you did not file your request for reinstatement in a timely manner; or we determine that your prior entitlement did not terminate because of your doing substantial gainful activity; or, as provided in these final rules, we determine that, in the month you requested reinstatement, you did not meet the requirement of being unable to engage in substantial gainful activity because of your medical condition. As provided in the final rules, you are also not entitled to provisional benefits if we determine that your statements on your request for reinstatement are false. Our determinations on provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover a previously existing overpayment from your provisional payments unless you give us permission to do so. If we determine you are not entitled to reinstated benefits, usually we will not consider the provisional benefits you received as an overpayment unless we determine you knew or should have known that you did not qualify for reinstatement and therefore you should not have received the provisional benefits. In these final rules we added a clarification in § 404.1592e(h) that provides if you receive provisional benefits when you are not entitled to provisional benefits because we determined you are not entitled to reinstatement before any provisional benefits were paid to you, the payments may be subject to recovery as an overpayment. Provisional benefits may also be subject to recovery as an overpayment if we pay you a provisional benefit for a month that comes after we determine you are not entitled to reinstated benefits.

In response to public comments, these final rules have been revised from the proposed rules to allow you to request reinstatement after being denied in a prior request. As these final rules provide you can file subsequent requests for reinstatement, we have also revised these final rules to provide that if you file a subsequent request for reinstatement on the same prior entitlement, after having received provisional benefits based upon the prior reinstatement request, you cannot be paid additional provisional benefits. In these final rules we changed § 404.1592f from the proposed rule to § 404.1592e since we deleted in its entirety the proposed § 404.1592e. In these final rules we have also deleted proposed § 404.1592f(d)(2) and redesignated proposed § 404.1592f(d)(3) as § 404.1592e(e)(2). This was necessary since proposed § 404.1592f(2) referenced deleted § 404.1592c(b).

Section 404.1592f now discusses how we determine your reinstated benefits consistent with the requirements regarding paying reinstated benefits in section 223(i) of the Act. These final rules explain that if we have determined we can reinstate you in the month you filed your reinstatement request, we will then consider whether we can pay you retroactive reinstated benefits. We will reinstate your benefits beginning with the earliest month in the 12-month period immediately preceding the month you requested reinstatement in which you would have met all of the reinstatement requirements if you had filed your request for reinstatement in that month. We will also reinstate your Medicare entitlement. Your entitlement to title II disability benefits and Medicare, under the expedited reinstatement provision, cannot be reinstated for a month prior to January 2001.

We will determine and pay your reinstated monthly benefits under our normal payment provisions of title II of the Act, with some exceptions. We will withhold from your reinstated benefits due for a month the amount of any provisional payments we already paid for that month. If the provisional benefits we paid you for a month exceed the amount of reinstated benefits due you for that month, we will consider the difference as an overpayment. We will use the same date of onset to calculate your new primary insurance amount as a reinstated individual that we used in your most recent period of disability. When you are reinstated, you are entitled to a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We consider a month a payable month when you do not do substantial gainful activity and the non-payment provisions in subpart E of part 404 do not apply. During the initial reinstatement period, in addition to normal non-payment events, a benefit is not payable for any month in which you do substantial gainful activity. We will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, or the provisions of § 404.1574a regarding averaging of earnings, when we determine if you have done substantial gainful activity in a month during your initial reinstatement period. After you complete your initial reinstatement period, we will consider your future work under the work incentive provisions of title II of the Act. Your trial work period begins the month after you complete your initial reinstatement period. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month we terminate your benefits for another reason, the month you reach retirement age, or the month you die.

We consider determinations we make regarding your title II reinstated benefits to be initial determinations subject to administrative and judicial review. If we determine you are not entitled to reinstated benefits, we will consider your request for reinstatement as your intent to file a new initial claim for the benefit.

In these final rules we changed § 404.1592g from the proposed rule to § 404.1592f, since we deleted in its entirety the proposed § 404.1592e. In these final rules we added a sentence to § 404.1592f(d) that provides if the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month under § 404.1592f. We added this sentence to clarify in these final rules our intent in the NPRM; it was not intended as a change from the proposed rules. We also changed references to § 404.900 through § 404.999 in paragraph (g) of the NPRM to subpart J of part 404 in these final rules. This has been done for simplification purposes and is not intended as a change from the proposed rules.

Part 416

Section 416.999 provides a general overview of expedited reinstatement and summarizes the basic requirements for expedited reinstatement, as discussed in §§ 416.999a through 416.999d. In response to public comments, in these final rules we have revised the requirement in the NPRM that you must have stopped doing

substantial gainful activity because of your medical condition to instead provide that you must be unable to do substantial gainful activity because of your medical condition. In these final rules we also revised the proposed reference in the last sentence of the section from § 416.999e to § 416.999d because we deleted the NPRM proposed § 416.999c.

Section 416.999a describes the requirements for reinstatement to title XVI benefits. Section 1631(p)(1) of the Act lists the requirements you must meet to be reinstated under the title XVI expedited reinstatement provision. These rules explain that you must have previously been eligible for SSI based on disability or blindness. We must have terminated your prior eligibility due to earned income or a combination of earned and unearned income. You must be unable to do substantial gainful activity due to your medical condition. Your current impairment must be the same as or related to the impairment on which we based your prior eligibility, and you must currently be disabled. Section 1631(p)(3) of the Act requires we use the medical improvement review standard in section 1614(a)(4) of the Act when we determine if you are disabled for the purposes of this provision. If you are reinstated, your spouse can also be reinstated if your spouse was previously eligible. Your spouse must request reinstatement and must meet the current eligibility factors for title XVI benefits.

In response to public comments, we are not requiring in these final rules that you stopped working due to your medical condition. However, as required under section 1631(p)(1)(B)(iii) of the Act, these final rules now provide that you must be unable to do substantial gainful activity because of your medical condition. When you file your request for reinstatement under § 416.999b that states you are unable to do substantial gainful activity due to your medical condition; and you do not do substantial gainful activity in the month you file your request for reinstatement; and we determine that you are under a disability, based on the application of the medical improvement review standard, as required by § 416.999a(a)(4); we will determine that you meet the requirement that you are unable to do substantial gainful activity due to your medical condition. We believe this more closely follows the requirement in section 1631(p)(1)(B)(iii) of the Act and removes a possible disincentive for you to return to work.

In response to public comments, in these final rules we also deleted proposed § 416.999a(b) and redesignated proposed § 416.999a(c) to § 416.999a(b). We are making these changes from the proposed rules so that you may be able to make a second request for reinstatement of eligibility. Therefore, for example, if your request for expedited reinstatement is denied because we either determine that your current impairment is not the same as or related to the impairment that we used as the basis for your previous entitlement or eligibility, or that you are not disabled, you may be able to be reinstated on a later request for reinstatement provided you meet the requirements in § 416.999a at that time. However, as we explain in § 416.999c, in these final rules we have added that you cannot be paid additional provisional benefits based on the subsequent request if you received provisional benefits based on the first request. By deleting proposed § 416.999a(b), these final rules now provide that you may also be able to be reinstated on your request for reinstatement even if, after your prior eligibility had been terminated because of your work activity, we had made an intervening determination that you were no longer disabled under the medical improvement review standard because we conducted a continuing disability review on a disability eligibility. We believe these changes make expedited reinstatement more responsive to your needs, while maintaining the integrity of the program.

Section 416.999b describes how to request reinstatement of benefits under the expedited reinstatement provision. Your request must be in writing. Section 1631(p)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that we terminated your prior eligibility to disability benefits because of earnings. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month time period. Your request must state that you are disabled, that your current impairment is the same as or related to the impairment that we used as the basis for your prior disability eligibility, that you cannot do substantial gainful activity because of your medical condition, and that you meet all of the non-medical requirements for eligibility. Your request must also include the information we need to determine whether you meet the non-medical factors of eligibility for the benefit and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001. In response to public comments, in these final rules we changed the proposed rule in § 416.999b(e) which stated that you must certify that you became unable to continue to do substantial gainful activity because of your medical condition. These final rules have been revised to require that you certify that you cannot do substantial gainful activity due to your medical condition. This change is necessary due to our decision to delete the proposed § 416.999c.

In response to public comments, we deleted proposed § 416.999c as these final rules do not require that you stopped working (or reduced your work and earnings below the substantial gainful activity level) because of your impairment. Therefore, the proposed § 416.999c is no longer necessary. As a result of this deletion, we changed §§ 416.999d and 416.999e in the proposed rules to §§ 416.999c and 416.999d, respectively, in these final rules.

Section 416.999c now provides information on when your title XVI provisional benefits start, how they are computed, when they are paid, and when they end. Section 1631(p)(7) of the Act lists the requirements for us to pay you provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, these final rules explain that we can pay you up to 6 months of provisional benefits during your provisional benefit period. Your provisional benefits will begin with the month after you request reinstatement. We will base your provisional benefit amount on normal computational methods for an individual receiving SSI benefits under title XVI of the Act with the same amounts and kind of income. If your spouse also requests reinstatement, we can pay provisional payments to your spouse. Your spouse must meet SSI eligibility requirements, except those relating to the filing of an application, before we can pay provisional payments. We will use the same computation method used for you and your spouse's provisional benefit that we would use to figure an eligible individual and eligible spouse receiving non-provisional benefits under title XVI of the Act with the same kind and amount of income. As required by section 1631(p)(8) of the Act, you are not eligible for state supplementary payments during the provisional benefit period.

Based on revisions to the proposed rules that we are making in response to public comments, these final rules provide that if you have previously received provisional benefits based upon a prior request for reinstatement, you cannot receive a second period of provisional benefits if you file a second request for reinstatement based on the same prior eligibility. In addition, as already provided in the proposed rules, we will not pay you provisional benefits for any month where a suspension or terminating event occurs under our usual rules, such as when you are in an institution or if you die. We also will not pay provisional benefits for any month after the earliest month either of the following events occurs: the month we send you our notice of our determination on your request for reinstatement; or the sixth month following the month you filed your request for reinstatement. You are not eligible for provisional benefits if, prior to starting your provisional benefits, we determine you do not meet the requirements for reinstatement such as when: We determine that you did not file your request for reinstatement timely; or we determine that your prior eligibility terminated for a reason unrelated to income; or, as provided in these final rules, we determine that you engaged in substantial gainful activity in the month you requested reinstatement. As provided in the final rules, you are also not eligible for provisional benefits, if we determine that your statements on your request for reinstatement are false. Our determinations on your provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover previously existing overpayments from your provisional payments unless you give us permission to do so. If we determine that you are not eligible for reinstated benefits, usually we will not consider the provisional payments you received as an overpayment unless you knew or should have known that you did not qualify for reinstatement and you should not have received provisional payments. In these final rules we added a clarification in § 416.999c(h) that provides if you receive provisional benefits when you are not entitled to provisional benefits because we determined you are not entitled to reinstatement before any provisional benefits were paid to you, the payments may be subject to recovery as an overpayment. Provisional benefits may also be subject to recovery as an overpayment if we pay you a provisional benefit for a month that comes after we determine you are not entitled to reinstated benefits.

In response to public comments, these final rules have been revised from the proposed rules to allow you to request reinstatement after being denied in a prior request. As these final rules provide you can file subsequent requests for reinstatement, we have also revised these final rules to provide that if you file a subsequent request for reinstatement on the same prior eligibility, after having received provisional benefits based upon the prior reinstatement request, you cannot be paid additional provisional benefits. In these final rules we changed § 416.999d from the proposed rule to § 416.999c since we deleted in its entirety the proposed § 416.999c. In these final rules we have also deleted proposed § 416.999d(d)(2) and redesignated proposed § 416.999d(d)(3) as § 416.999c(e)(2). This was necessary since proposed § 416.999d(d)(2) referenced deleted § 416.999a(b).

Section 416.999d now discusses how we determine your reinstated SSI benefits consistent with the requirements regarding paying reinstated benefits in section 1631(p)(4) of the Act. These final rules explain that we will reinstate your eligibility, and your spouse's eligibility, with the month following the month you filed your request for reinstatement. Your eligibility cannot be reinstated for a month prior to February 2001.

We will determine and pay your reinstated benefits under the normal payment provisions of title XVI of the Act, with one exception. We will withhold from your reinstated benefits due in a month the amount of any provisional payments you were already paid for that month. If we pay you a provisional benefit for a month that exceeds the amount of your reinstated benefit due for that month, we will consider the difference an overpayment. When your request for reinstatement is approved, you are eligible for a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We consider a month a payable month when, considering the normal payment rules, you are due a benefit payment for the month. As a result of public comments, we have also clarified in these final rules in § 416.999d(c) that we will consider a month a payable month in your initial reinstatement period if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Act. After you complete the initial reinstatement period, you are again eligible for expedited reinstatement if we terminate your eligibility due to income. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month before we terminate your eligibility for another reason, or the month you die.

We consider determinations we make regarding your title XVI reinstated benefits to be initial determinations subject to administrative and judicial review. If we determine you are not eligible for reinstated benefits we will consider your request for reinstatement your intent to file a new initial claim for benefits.

In these final rules we changed § 416.999e from the proposed rule to § 416.999d since we deleted in its entirety the proposed § 416.999c. In these final rules we added a sentence to § 416.999d(c) that provides if the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month under § 416.999d. We also changed references to §§ 416.1400 through 416.1499 in paragraph (e) of the NPRM to subpart N of part 416 in these final rules. This has been done for simplification purposes and is not intended as a change from the proposed rules.

Public Comments

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 27, 2003 (68 FR 61162), which proposed rules regarding the Expedited Reinstatement provision. We provided a 60-day period for the public to comment ending December 26, 2003. We subsequently extended the comment period to January 16, 2004. (69 FR 307 (1994)). We received comments from 72 commenters. We carefully considered the comments we received on the proposed rules in publishing these final rules. The comments we received and our responses to the comments are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe we have expressed the views accurately and have responded to all the relevant issues raised.

Comments and Responses

Comment: Multiple commenters indicated that we should modify proposed §§ 404.1592c(b) and 416.999a(b), which stated that your entitlement could not be reinstated

under the expedited reinstatement provision if we had previously denied your prior request for expedited reinstatement because we determined you were not disabled or because we determined you did not have a same as or related impairment, or because, after your prior entitlement had been terminated because of your work activity, we had made an intervening determination that you were no longer disabled based upon a prior medical review or continuing disability review. These commenters indicated that these sections could limit the effectiveness of expedited reinstatement by not allowing you to use this provision more than once. Other commenters suggested that we should either delete §§ 404.1592c(b) and 416.999a(b) or provide a time limit after which a second request for reinstatement could be allowed.

Response: Based upon these comments, we decided to delete proposed §§ 404.1592c(b) and 416.999a(b) from these final rules. Therefore, if your request for expedited reinstatement is denied because we either determine that your current impairment is not the same as or related to the impairment that we used as the basis for your previous entitlement or eligibility, or that you are not disabled, as determined under the medical improvement review standard in §§ 404.1594(a) through 404.1594(e), 416.994, or 416.994a, you may be able to be reinstated on a later request for reinstatement provided you meet the requirements in § 404.1592c or § 416.999a at that time. However, as we explain in our discussion of § 404.1592e and § 416.999c, these final rules have been revised to provide that you cannot be paid additional provisional benefits based on a subsequent request if you received provisional benefits based on the first request. You also may be able to be reinstated on your request for reinstatement if, after your prior entitlement had been terminated because of your work activity, we made an intervening determination that you were no longer disabled under the medical improvement review standard because we conducted a continuing disability review on a disability entitlement or eligibility or a medical review on your Medicare entitlement. We believe these changes make expedited reinstatement more responsive to those people with episodic impairments and serve as a better incentive to return to work, while also maintaining the integrity of the program.

Comment: Multiple commenters indicated that we should change our proposed rules in §§ 404.1592b, 404.1592e, 416.999 and 416.999c to state that you should not have to have stopped working due to your medical condition to qualify for expedited reinstatement.

Response: We agree with these comments. In these final rules we deleted the requirement in NPRM sections §§ 404.1592b, 404.1592e, 416.999, and 416.999c that you must have stopped working due to your medical condition. These final rules have been revised to require under §§ 404.1592b, 404.1592c(a)(4)(i), 416.999, and 416.999a(4)(i) that you must be unable to do substantial gainful activity because of your medical condition. Also, when you file your request for reinstatement under §§ 404.1592d and 416.999b these final rules provide, as required by sections 223(i)(2)(A)(ii) and 1631(p)(2)(A)(ii) of the Act, that you will need to certify that you cannot do substantial gainful activity due to your medical condition. This requirement was changed from the NPRM that you certify that you became unable to do substantial gainful activity due to your medical condition. When you file your request for reinstatement stating that you cannot do substantial gainful activity due to your medical condition, you do not do substantial gainful activity in the month you file your request for reinstatement, and we determine that you are under a disability, based on the application of the medical improvement review standard, as required by §§ 404.1592c(a)(4) and 416.999a(a)(4), we will then determine that you meet the requirement that you cannot do substantial gainful activity due to your medical condition. We believe this more closely follows the requirement in sections 223(i)(1)(B)(iii) and 1631(p)(1)(B)(iii) of the Social Security Act as it conforms to the plain language of the statue that states your disability must render you unable to do substantial gainful activity. Therefore, your medical condition does not have be the reason you stopped working, but it must cause you to now be unable to do substantial gainful activity.

We, therefore, deleted in their entirety the proposed rules in §§ 404.1592e and 416.999c as they are no longer necessary. Since we deleted §§ 404.1592e and 416.999c, we changed proposed §§ 404.1592f, 404.1592g, 416.999d and 416.999e to §§ 404.1592e, 404.1592f, 416.999c and 416.999d, respectively, in these final rules. As indicated above, in these final rules we have also made necessary changes in proposed §§ 404.1592b, 404.1592d, 416.999 and 416.999b.

Comment: Multiple commenters expressed the view that if we remove the requirement in §§ 404.1592e and 416.999c that you must have stopped your work activity due to your medical condition, we could then also remove the requirement that we must do a continuing disability review to determine whether you are disabled when you request reinstatement. One commenter suggested that we should reestablish the medical diary review date on your reinstatement and do the medical review at the previously scheduled time.

Response: We deleted proposed §§ 404.1592e and 416.999c. However, even though we deleted those rules, we still have to make a medical determination when you request reinstatement. Sections 223(i)(3) and 1631(p)(3) of the Act require we use the requirements of sections 223(f) and 1614(a)(4) to determine whether you are under a disability, or blind or disabled, respectively. These sections also require that you must have a current physical or mental impairment that is the same as or related to the impairment that was the basis for the finding of disability that gave rise to your prior entitlement or eligibility. Therefore, the medical determination we make when you request reinstatement is an entitlement or eligibility determination that uses, in part, our medical improvement review standard. Since the statute requires you must be disabled (or blind), we are continuing to include that requirement in these final rules in §§ 404.1592c(a)(4) and 416.999a(a)(4).

Comment: Multiple commenters suggested that we reword the preamble explanation of proposed § 404.1592f(a)(6) (§ 404.1592e(a)(6) in these final rules) to more closely match the wording of the regulation. These commenters stated that the wording in the preamble could be misinterpreted to mean that we would adjust provisional benefits payable when the provisional benefits, plus the benefit payable to beneficiaries already entitled on the record, exceed the family maximum benefit payable.

Response: We reworded the preamble discussion of this provision to more closely match the wording of § 404.1592e(a)(6) in these final rules. We believe the revised preamble is clearer as it now states that we will not reduce your provisional benefit, or the payable benefits to other individuals entitled at that time on the same record, when your provisional benefit causes the total benefits payable on the record to exceed the family maximum.

Comment: Multiple commenters indicated that under proposed

§§ 404.1592g(c)(1) and 416.999e(b) (§§ 404.1592f(c)(1) and 416.999d(b) in these final rules) we should not recover as an overpayment provisional benefits that were paid to you that exceed the amount of the reinstated benefit you are due when the family maximum benefit is involved.

Response: Section 223(i)(7)(D) (and section 1631(p)(7)(D) for SSI cases) of the Act generally provides for the exclusion of the provisional benefits you have been paid from recovery as an overpayment when we determine that you are not entitled to reinstated benefits. That statutory exclusion is not applicable when we determine that you are entitled to reinstated benefits. Section 223(i)(4)(B)(iii) (and section 1631(p)(4)(B)(ii) for SSI cases) requires us to reduce your reinstated benefits by the amount of any provisional benefits you have been paid for the month. The Act does not provide for the exclusion from possible recovery as an overpayment the amount of provisional benefits that exceed your reinstated benefits when you are reinstated. We believe the number of overpayments, and the amount of those overpayments, created under §§ 404.1592f(c)(1) and 416.999d(c) of these final rules will be minimal. You can also request we waive adjustment or recovery of the overpayment under subpart F of part 404 (subpart E of part 416 for SSI cases).

Comment: Multiple commenters indicated that the 24 month initial reinstatement period in § 404.1592g(d) and § 416.999e(c), (§§ 404.1592f(d) and 416.999d(c) in these final rules) is confusing and should be simplified. One commenter expressed concern that we may not be able to process monthly wage reports on a timely basis, which could serve as a disincentive for you to return to work.

Response: The 24 month initial reinstatement period is established by sections 223(i)(6) and 1631(p)(6) of the Act. Furthermore, section 223(i)(4)(c) specifically provides that, when you are reinstated under the expedited reinstatement provision, we may not pay a benefit for any month in which you engage in substantial gainful activity. In developing the proposed rules, we attempted to avoid any unnecessary complexity regarding the 24 month initial reinstatement period, and did not add any complexity beyond what the statute requires. We have changed the section numbers from §§ 404.1592g and 416.999e to §§ 404.1592f and 416.999d, respectively, because, as explained in response to another comment, we decided to delete the proposed §§ 404.1592e and 416.999c. As a result of these comments, we have included two clarifications in these final rules that were not in the proposed rules. We have clarified in § 404.1592f(d) (and § 416.999d(c)) of these final rules that if the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month, so no additional payment is due, we will consider that month a payable month in your initial reinstatement period. We have also clarified in these final rules in § 416.999d(c) that we will consider a month a payable month in your initial reinstatement period if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Act. We recognize the need to process your work reports in a timely manner. We believe actions we have taken, outside of these final rules, are addressing this concern. We do not believe these final rules are the appropriate avenue to address this issue.

Comment: One commenter indicated that if you are requesting reinstatement on the record of an insured person under proposed § 404.1592c(c), you should not be required to file a new application to receive those benefits.

Response: Section 223(i)(5) of the Social Security Act provides that we may reinstate your entitlement on the record of an insured person if we determine that you satisfy the requirements for entitlement to such benefits (other than the requirements related to the filing of an application). Therefore, under proposed § 404.1592c(c), redesignated as § 404.1592c(b) in these final rules, and § 404.1592d, you must make a request for reinstatement (as opposed to filing an application) and your request must be in writing and provide us the information we request so that we can determine whether you meet the requirements for entitlement. The purpose of the form we require is to allow us to collect the information we need to determine whether you meet the requirements for reinstatement and to determine your proper benefit amount should we determine you can be reinstated.

Comment: Multiple commenters indicated that we should design a separate form to use to request reinstatement under §§ 404.1592d and 416.999b, rather than using already existing forms we use for other purposes. Commenters suggested we should possibly tailor the form to the reinstatement requirements or make the form shorter and easier to complete.

Response: Sections 223(i)(2)(A) and 1631(p)(2)(A) of the Act provide that we should determine the form and the information we need in your reinstatement request. These sections also specifically require that your request must include a statement that you are under a disability, the impairment that is the basis for the finding of disability is the same as or related to the impairment that was the basis for the finding of disability that gave rise to your prior disability entitlement, and that your disability renders you unable to perform substantial gainful activity. Therefore, your request for reinstatement under §§ 404.1592d and 416.999b must be made in writing and must provide us the information we need so that we can determine whether you meet the requirements for reinstatement. We have designed separate reinstatement request forms for you to use to request reinstatement. The purpose of the supplemental forms we require is to allow us to collect the additional information we need to determine whether you meet the requirements for reinstatement and to determine your proper benefit amount should we determine you can be reinstated. We are not developing a specialized supplemental form to collect the additional information we need, as the information needed is the same information we can collect using our existing forms.

Comment: One commenter indicated that deciding whether to file for reinstatement versus filing a new initial claim application may be difficult, so you should seek advice. This commenter suggested that we should include language in these final rules explaining the complexity of this decision and the need to consult with our staff and possibly others prior to making this decision.

Response: Our staff is trained to assist you when you decide whether to file a new initial application, or whether to file for expedited reinstatement. There can be advantages to filing a request for expedited reinstatement such as: the payment of provisional benefits, entitlement to Medicare benefits or Medicaid, using the medical improvement review standards for the medical determination, and protecting your filing for an initial claim if your expedited reinstatement request is denied. Also, for Social Security benefit purposes, if your benefits are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record. Since we will not pay you reinstated benefits for any months of substantial gainful

activity during your initial reinstatement period, this could also be an advantage in extending your entitlement. There could also be some disadvantages to filing a request for reinstatement rather than a new initial application: such as, if we deny your request for reinstatement because we determine you are not disabled under the medical improvement review standard, we could also stop your Medicare benefits; in some circumstances your monthly benefit amount could be less than it would be if you became entitled to disability benefits again by filing a new application; and your trial work period begins after you have completed your 24 month initial reinstatement period rather than being immediately available to you if you became entitled again by filing a new application. It will normally be to your advantage to request expedited reinstatement rather than filing a new initial application; however, this decision will depend on your particular circumstances and you should discuss this thoroughly with our staff at the appropriate time. Since these decisions must be made based upon your own particular circumstances, we are not placing language in these final rules about these discussions beyond what is required to be eligible for, or entitled to, reinstatement.

When you contact us about filing a new initial application for benefits, or about requesting reinstatement, our staff will discuss with you your options and the effect of your decision. You could also choose to obtain information about your options from other knowledgeable sources. We want to make sure you make the decision that is the most advantageous for you. Since the decision on whether to request reinstatement is your decision, you should consider all of your individual circumstances, however, we do not believe we could properly discuss in these final rules everything you should consider. Since we cannot identify in these final rules all of the information you may need to make your decision, we also do not believe we could tell you how you should arrive at your decision. Therefore, while we do encourage you to discuss your situation with our staff and others who would be helpful, we do not believe we can include in these final rules a rule on how you should arrive at your decision.

Comment: One commenter noted that proposed § 416.999d (§ 416.999c in these final rules) discusses overpayment policies for provisional benefits when we determine that you are not eligible to receive reinstated benefits and suggested that clarifying this language may be helpful, especially when we say that provisional benefits already paid under § 416.999c will not be subject to recovery as an overpayment unless we determine you knew, or should have known, you did not meet the requirements for reinstatement.

Response: We considered this comment and decided not to change these final rules. The specific language regarding ''whether you knew, or should have known,'' is in § 416.999c(h) and is based upon the standard set forth in section 1631(p)(7)(D) of the Act. In these final rules we used the same phrasing as in the statute for whether you knew, or should have known. Our determination on whether you knew or should have known you did not meet the requirements for reinstatement will be based on the facts of your situation.

Comment: Multiple commenters indicated that under proposed §§ 404.1592f and 416.999d (§§ 404.1592e and 416.999c in these final rules), your provisional benefits should be extended beyond the six month limitation if we cannot make our determination within six months, or we should ensure all reinstatement determinations are made within six months.

Response: Sections 223(i)(7)(C)(ii) and 1631(p)(7)(C)(ii) of the Act require us to stop your provisional benefits with the earlier of the month in which we make our determination on your eligibility or entitlement for reinstated benefits or with the end of the fifth month after your provisional benefits start. Therefore, we can pay you no more than six months of provisional benefits. While we do try to make all determinations within this six month timeframe, since the Act considers the possibility we may not be able to do this and requires we stop payments if we haven't, we do not have the authority to extend provisional benefits beyond the consecutive six months that begin with the first month your provisional benefits can start under § 404.1592e or § 416.999c of these final rules.

Comment: One commenter indicated that we should clarify the circumstances when benefits would be offered under proposed § 416.999e(f) (§ 416.999d(f) of these final rules) when we say that if we deny your request for reinstatement, the denial protects your filing a new claim.

Response: Section 1631(p)(2)(B) (section 223(i)(2)(B) for title II cases) of the Act provides that a request for reinstatement may lead to constitute an application for benefits if we determine you are not eligible for reinstated benefits. These final rules, therefore, provide that if you request reinstatement under § 416.999b and we determine that we cannot reinstate your eligibility, we will then treat your request for reinstatement as your intent to file a new initial claim (*i.e.*, a protective filing). The NPRM and these final rules do not place any restrictions on having your reinstatement request treated as a protective filing, other than we must determine you are not eligible for reinstated benefits. If we determine you are not eligible for reinstatement, you can then file a new initial application for benefits and have the date you filed your request for reinstatement considered to be your application filing date. If we determine your benefits cannot be reinstated, that determination is considered an initial determination and you can also request review if you are dissatisfied with it. If you choose, you can file a new initial application for benefits at the same time you request we review our determination that your benefits cannot be reinstated.

Comment: One commenter indicated that since an expedited reinstatement determination that denies eligibility becomes a new application there appears to be little gained by our insisting that the expedited reinstatement determination not be an initial determination for appeal purposes.

Response: We have considered this comment and have not changed these final rules. These final rules provide, under §§ 404.1592f and 416.999d, that determinations we make regarding your entitlement to or eligibility for reinstated benefits are initial determinations for purposes of our administrative review process. The NPRM, and these final rules, provide in §§ 404.903, 404.1592e(f), 416.999c(f), and 416.1403, that determinations we make regarding your provisional benefits are not initial determinations and are not subject to administrative or judicial review. We believe the commenter may have confused provisional benefit determinations with determinations we make regarding your entitlement to or eligibility for reinstatement.

Comment: Multiple commenters indicated that we should provide a means by which you can obtain a new ticket under the Ticket to Work program when your entitlement is reinstated under the expedited reinstatement provision.

Response: If you are reinstated under the expedited reinstatement provision, under §§ 404.1592b through 404.1592f or §§ 416.999 through 416.999d, you may be eligible for a new ticket under § 411.125(c). Since the Ticket to Work program already provides those rules,

we have not included them in these final rules.

Comment: Multiple commenters stated that we should add a section to the expedited reinstatement rules to provide different rules for people using a ticket under the Ticket to Work program.

Response: Sections 223(i) and 1631(p) of the Act do not provide us the authority to provide different rules for you if you are using a ticket as part of the Ticket to Work program under §§ 411.100 through 411.735. The expedited reinstatement provision is a work incentive that you can use if you meet the requirements indicated in § 404.1592b or § 416.999, without consideration of whether you are using a ticket. We cannot add rules in these final rules that provide different rules for you if you are using a ticket.

Comment: One commenter stated that if you have assigned and are using a ticket under the Ticket to Work program, you should be allowed to move into payment status when you are not engaging in substantial gainful activity.

Response: As we noted in the prior response, we do not have the statutory authority to pay you benefits using different rules if you are using a ticket under the Ticket to Work Program. Section 223(i)(6) of the Act provides that after you have been reinstated and you have had 24 payable months, you will be afforded the work incentives that would have been provided you if you had filed a new initial application. Therefore, as we indicate in these final rules, after you have completed your 24 month initial reinstatement period you will then be provided a new trial work period and then a reentitlement period using the rules in §§ 404.1592 and 404.1592a.

Comment: One commenter expressed the view that the expedited reinstatement rules may discourage your employment network, under the Ticket to Work program, from providing additional services. The provisional benefit period could encourage an employment network to stop services during that period. In addition, the commenter noted that if we provide you with a new ticket when benefits are reinstated, we must cancel the old ticket.

Response: Sections 223(i) and 1631(p) of the Act provide the statutory requirements for paying provisional benefits when you request reinstatement. These final rules include the rules we will use to determine when we can pay you provisional benefits. Under § 404.1592e(d) in these final rules, and consistent with the statutory requirements, we will not pay you a provisional benefit for any month that is after the month you do substantial gainful activity. In addition, under § 416.999c, we will determine your benefits payable for supplemental security income purposes using our normal income rules. Therefore, the disincentive for an employment network to provide services to you during the provisional benefit period is lessened by the fact that if you return to work at a substantial level we will stop paying you provisional benefits. In addition, when you are reinstated, we can provide you a new ticket if you meet the requirements under § 411.125(c). If we provide you with a new ticket, we will terminate your prior ticket under § 411.155(b) and (c)(7). We do not believe that the expedited reinstatement rules provide a disadvantage to your employment network in comparison to the rules for establishing entitlement or eligibility based on the filing of a new application. If your new entitlement or eligibility were based upon your filing a new initial application for benefits, we would terminate your prior ticket under § 411.155(b) and (c)(6). In that case, you would receive a new ticket if you meet the requirements of § 411.125(a) and (b). By providing you a new ticket, you are then able to receive services and your employment network can then receive payments from us based upon the new ticket.

Comment: One commenter suggested that we should discuss how expedited reinstatement, unemployment insurance, and the Workforce Investment Act interrelate. This commenter pointed out that if we determine you cannot be reinstated that there may be other services you can receive.

Response: If we determine that we cannot reinstate you after you have requested expedited reinstatement, under §§ 404.1592f(h) and 416.999d(f), your request for reinstatement serves as your intent to claim benefits. Therefore, you can file a new initial application for benefits. If we determine your benefits cannot be reinstated, that determination is considered an initial determination and you can request review if you are dissatisfied with it. We did not discuss in these final rules other services you may be able to receive if your reinstatement request is denied. Those services can vary depending upon where you live and your particular circumstances and those rules are beyond the scope of these final rules.

Regulatory Procedures

Executive Order 12866

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules would not have a significant economic impact on a substantial number of small entities because they would primarily affect only individuals. Thus an initial regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in sections 404.1592c, 404.1592d, 416.999a, and 416.999b of these final rules. The OMB Control Number for this collection is 0960–0690, expiring 08/31/2007.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 26, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending part 404, subparts J and P, and part 416, subparts I and N, of title 20 of the Code of Federal Regulations to read as follows:

PART 404—FEDERAL OLD-AGE, SURVIVOR AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 2. Amend § 404.903 to revise paragraphs (u) and (v) and add paragraph (w) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 404.527 and 422.310 of this chapter);

(v) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title II of the Social Security Act (see part 422, subpart E, of this chapter); and

(w) Determining whether provisional benefits are payable, the amount of the provisional benefits, and when provisional benefits terminate (see § 404.1592e).

Subpart P—[Amended]

■ 3. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 4. Add new §§ 404.1592b through 404.1592f to read as follows:

§ 404.1592b What is expedited reinstatement?

The expedited reinstatement provision provides you another option for regaining entitlement to benefits when we previously terminated your entitlement to disability benefits due to your work activity. The expedited reinstatement provision provides you the option of requesting that your prior entitlement to disability benefits be reinstated, rather than filing a new application for a new period of entitlement. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must not be able to do substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard that we use in our continuing disability review process. The advantage of using the medical improvement review standard is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the medical improvement review standard process applies. We explain the rules for expedited reinstatement in §§ 404.1592c through 404.1592f.

§ 404.1592c Who is entitled to expedited reinstatement?

(a) You can have your entitlement to benefits reinstated under expedited reinstatement if—

(1) You were previously entitled to a disability benefit on your own record of earnings as indicated in § 404.315, or as a disabled widow or widower as indicated in § 404.335, or as a disabled child as indicated in § 404.350, or to Medicare entitlement based on disability and Medicare qualified government employment as indicated in 42 CFR 406.15;

(2) Your disability entitlement referred to in paragraph (a)(1) of this section was terminated because you did substantial gainful activity;

(3) You file your request for reinstatement timely under § 404.1592d; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section;

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous entitlement referred to in paragraph (a)(2) of this section; and

(iii) You are disabled, as determined under the medical improvement review standard in §§ 404.1594(a) through (e).

(b) You are entitled to reinstatement on the record of an insured person who is or has been reinstated if—

(1) You were previously entitled to one of the following benefits on the record of the insured person—

(i) A spouse or divorced spouse benefit under §§ 404.330 and 404.331;

(ii) A child's benefit under § 404.350; or

(iii) A parent's benefit under § 404.370;

(2) You were entitled to benefits on the record when we terminated the insured person's entitlement;

(3) You meet the requirements for entitlement to the benefit described in the applicable paragraph (b)(1)(i) through (b)(1)(iii) of this section; and

(4) You request to be reinstated.

(c) We will determine that you are not able to do substantial gainful activity because of your medical condition, under paragraph (a)(4)(i) of this section, when:

(1) You certify under § 404.1592d(d)(2) that you are unable to do substantial gainful activity because of your medical condition;

(2) You do not do substantial gainful activity in the month you file your request for reinstatement; and

(3) We determine that you are disabled under paragraph (a)(4)(iii) of this section.

§ 404.1592d How do I request reinstatement?

(a) You must make your request for reinstatement in writing.

(b) You must have filed your request on or after January 1, 2001.

(c) You must provide the information we request so that we can determine whether you meet the requirements for reinstatement as indicated in § 404.1592c.

(d) If you request reinstatement under § 404.1592c(a)—

(1) We must receive your request within the consecutive 60-month period that begins with the month in which your entitlement terminated due to doing substantial gainful activity. If we receive your request after the 60-month period we can grant you an extension if we determine you had good cause under the standards explained in § 404.911 for not filing the request timely; and

(2) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit you are requesting to be reinstated, and that you are unable to do substantial gainful activity because of your medical condition.

§ 404.1592e How do we determine provisional benefits?

(a) You may receive up to 6 consecutive months of provisional cash benefits and Medicare during the provisional benefit period, while we determine whether we can reinstate your disability benefit entitlement under § 404.1592c—

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your

request for reinstatement under § 404.1592c(a).

(2) We will pay you a monthly provisional benefit amount equal to the last monthly benefit payable to you during your prior entitlement, increased by any cost of living increases that would have been applicable to the prior benefit amount under § 404.270. The last monthly benefit payable is the amount of the monthly insurance benefit we determined that was actually paid to you for the month before the month in which your entitlement was terminated, after we applied the reduction, deduction and nonpayment provisions in § 404.401 through § 404.480.

(3) If you are entitled to another monthly benefit payable under the provisions of title II of the Act for the same month you can be paid a provisional benefit, we will pay you an amount equal to the higher of the benefits payable.

(4) If you request reinstatement for more than one benefit entitlement, we will pay you an amount equal to the higher of the provisional benefits payable.

(5) If you are eligible for Supplemental Security Income payments, including provisional payments, we will reduce your provisional benefits under § 404.408b if applicable.

(6) We will not reduce your provisional benefit, or the payable benefit to other individuals entitled on an earnings record, under § 404.403, when your provisional benefit causes the total benefits payable on the earnings record to exceed the family maximum.

(b) You cannot receive provisional cash benefits or Medicare a second time under this section when—

(1) You request reinstatement under § 404.1592c(a);

(2) You previously received provisional cash benefits or Medicare under this section based upon a prior request for reinstatement filed under § 404.1592c(a); and

(3) Your requests under paragraphs (b)(1) and (b)(2) are for the same previous disability entitlement referred to in § 404.1592c(a)(2).

(4) *Examples:*

Example 1 —Mr. K files a request for reinstatement in April 2004. His disability benefit had previously terminated in January 2003. Since Mr. K meets other factors for possible reinstatement (*i.e.*, his prior entitlement was terminated within the last 60 months because he was engaging in substantial gainful activity), we start paying him provisional benefits beginning April 2004 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. In July 2004 we determine that Mr. K cannot be reinstated because he is not disabled under the medical improvement review standard; therefore we stop his provisional benefits. Mr. K does not request review of that determination. In January 2005 Mr. K again requests reinstatement on the entitlement that terminated in January 2003. Since this request meets all the factors for possible reinstatement, and his request is still within 60 months from January 2003, we will make a new determination on whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. Since the January 2005 request and the April 2004 request both request reinstatement on the same entitlement that terminated in January 2003, and since we already paid Mr. K provisional benefits based upon the April 2004 request, we will not pay additional provisional benefits on the January 2005 request for reinstatement.

Example 2 —Assume the same facts as shown in Example 1 of this section, with the addition of these facts. We approve Mr. K's January 2005 request for reinstatement and start his reinstated benefits beginning January 2005. Mr. K subsequently returns to work and his benefits are again terminated due to engaging in substantial gainful activity in January 2012. Mr. K must again stop work and requests reinstatement in January 2015. Since Mr. K meets other factors for possible reinstatement (*i.e.*, his prior entitlement was terminated within the last 60 months because he was engaging in substantial gainful activity) we start paying him provisional benefits beginning January 2015 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2012.

(c) We will not pay you a provisional benefit for a month when an applicable nonpayment rule applies. Examples of when we will not pay a benefit include, but are not limited to—

(1) If you are a prisoner under § 404.468;

(2) If you have been removed/deported under § 404.464; or

(3) If you are an alien outside the United States under § 404.460.

(d) We will not pay you a provisional benefit for any month that is after the earliest of the following months—

(1) The month we send you a notice of our determination on your request for reinstatement;

(2) The month you do substantial gainful activity;

(3) The month before the month you attain full retirement age; or

(4) The fifth month following the month you requested expedited reinstatement.

(e) You are not entitled to provisional benefits if—

(1) Prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement under §§ 404.1592c(a); or

(2) We determine that your statements on your request for reinstatement, made under § 404.1592d(d)(2), are false.

(f) Determinations we make regarding your provisional benefits under paragraphs (a) through (e) of this section are final and are not subject to administrative and judicial review under subpart J of part 404.

(g) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission. We can recover Medicare premiums you owe from your provisional benefits.

(h) If we determine you are not entitled to reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (d) of this section will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 404.1592c. If we inadvertently pay you provisional benefits when you are not entitled to them because we have already made a determination described in paragraph (e) of this section, they will be subject to recover as an overpayment under subpart F of part 404.

§ 404.1592f How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 404.1592c(a), we will then consider in which month to reinstate your entitlement. We will reinstate your entitlement with the earliest month, in the 12-month period that ends with the month before you filed your request for reinstatement, that you would have met all of the requirements under § 404.1592c(a) if you had filed your request for reinstatement in that month. Otherwise, you will be entitled to reinstated benefits beginning with the month in which you filed your request for such benefits. We cannot reinstate your entitlement for any month prior to January 2001.

(b) When your entitlement is reinstated, you are also entitled to Medicare benefits under the provisions of 42 CFR part 406.

(c) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs

of §§ 404.201 through 404.480 with certain exceptions—

(1) We will reduce your reinstated benefit due in a month by the amount of the provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit, we will treat the difference as an overpayment under §§ 404.501 through 404.527.

(2) If you are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record.

(d) We will not pay you reinstated benefits for any months of substantial gainful activity during your initial reinstatement period. During the initial reinstatement period, the trial work period provisions of § 404.1592 and the reentitlement period provisions of § 404.1592a do not apply. The initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you do not do substantial gainful activity in that month and when the non-payment provisions in subpart E of part 404 also do not apply. If the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month. When we determine if you have done substantial gainful activity in a month during the initial reinstatement period, we will consider only your work in, or earnings for, that month. We will not apply the unsuccessful work attempt provisions of §§ 404.1574(c) and 404.1575(d) or the averaging of earnings provisions in § 404.1574a.

(e) After you complete the 24-month initial reinstatement period as indicated in paragraph (d) of this section, your subsequent work will be evaluated under the trial work provisions in § 404.1592 and then the reentitlement period in § 404.1592a.

(f) Your entitlement to reinstated benefits ends with the month before the earliest of the following months—

(1) The month an applicable terminating event in § 404.301 through 404.389 occurs;

(2) The month in which you reach retirement age;

(3) The third month following the month in which your disability ceases; or

(4) The month in which you die.

(g) Determinations we make under §§ 404.1592f are initial determinations under § 404.902 and subject to review under subpart J of part 404.

(h) If we determine you are not entitled to reinstated benefits we will consider your request filed under § 404.1592c(a) your intent to claim benefits under § 404.630.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 5. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b; secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 6. Add new §§ 416.999 through 416.999d to read as follows:

§ 416.999 What is expedited reinstatement?

The expedited reinstatement provision provides you another option for regaining eligibility for benefits when we previously terminated your eligibility for disability benefits due to your work activity. The expedited reinstatement provision provides you the option of requesting that your prior eligibility for disability benefits be reinstated, rather than filing a new application for a new period of eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must not be able to do substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard that we use in our continuing disability review process. The advantage of using the medical improvement review standard is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the medical improvement review standard process applies. We explain the rules for expedited reinstatement in §§ 416.999a through 416.999d.

§ 416.999a Who is eligible for expedited reinstatement?

(a) You can have your eligibility to benefits reinstated under expedited reinstatement if—

(1) You were previously eligible for a benefit based on disability or blindness as explained in § 416.202;

(2) Your disability or blindness eligibility referred to in paragraph (a)(1) of this section was terminated because of earned income or a combination of earned and unearned income;

(3) You file your request for reinstatement timely under § 416.999b; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition, as determined under paragraph (c) of this section,

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous eligibility referred to in paragraph (a)(2) of this section,

(iii) You are disabled or blind, as determined under the medical improvement review standard in §§ 416.994 or 416.994a, and

(iv) You meet the non-medical requirements for eligibility as explained in § 416.202.

(b) You are eligible for reinstatement if you are the spouse of an individual who can be reinstated under § 416.999a if—

(1) You were previously an eligible spouse of the individual;

(2) You meet the requirements for eligibility as explained in § 416.202 except the requirement that you must file an application; and

(3) You request reinstatement.

(c) We will determine that you are not able to do substantial gainful activity because of your medical condition, under paragraph (a)(4)(i) of this section, when:

(1) You certify under § 416.999b(e) that you are unable to do substantial gainful activity because of your medical condition;

(2) You do not do substantial gainful activity in the month you file your request for reinstatement; and

(3) We determine that you are disabled under paragraph (a)(4)(iii) of this section.

§ 416.999b How do I request reinstatement?

(a) You must make your request for reinstatement in writing.

(b) You must have filed your request on or after January 1, 2001.

(c) You must provide the information we request so that we can determine

whether you meet the eligibility requirements listed in § 416.999a.

(d) We must receive your request within the consecutive 60-month period that begins with the month in which your eligibility terminated due to earned income, or a combination of earned and unearned income. If we receive your request after the 60-month period, we can grant you an extension if we determine you had good cause, under the standards explained in § 416.1411, for not filing the request timely.

(e) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the eligibility you are requesting to be reinstated, that you are unable to do substantial gainful activity because of your medical condition, and that you meet the non-medical requirements for eligibility for benefits.

§ 416.999c How do we determine provisional benefits?

(a) You may receive up to six consecutive months of provisional cash benefits and Medicaid during the provisional benefit period, while we determine whether we can reinstate your disability benefit eligibility under § 416.999a—

(1) We will pay you provisional benefits beginning with the month after you file your request for reinstatement under § 416.999a(a).

(2) If you are an eligible spouse, you can receive provisional benefits with the month your spouse's provisional benefits begin.

(3) If you do not have an eligible spouse, we will pay you a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual under §§ 416.401 through 416.435 with the same kind and amount of income as you have.

(4) If you have an eligible spouse, we will pay you and your spouse a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual and eligible spouse under § 416.401 through 416.435 with the same kind and amount of income as you and your spouse have.

(5) Your provisional benefits will not include state supplementary payments payable under §§ 416.2001 through 416.2176.

(b) You cannot receive provisional cash benefits or Medicaid a second time under this section when—

(1) You request reinstatement under § 416.999a;

(2) You previously received provisional cash benefits or Medicaid under this section based upon a prior request for reinstatement filed under § 416.999a(a); and

(3) Your requests under paragraphs (b)(1) and (b)(2) are for the same previous disability eligibility referred to in § 416.999a(a)(2) of this section.

(4) *Examples:*

Example 1 —Mr. K files a request for reinstatement in April 2004. His disability benefit had previously terminated in January 2003. Since Mr. K meets the other factors for possible reinstatement (i.e., his prior eligibility was terminated within the last 60 months because of his work activity) we start paying him provisional benefits beginning May 2004 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. In July 2004 we determine that Mr. K cannot be reinstated because he is not disabled under the medical improvement review standard; therefore we stop his provisional benefits. Mr. K does not request review of the determination. In January 2005 Mr. K again requests reinstatement on the eligibility that terminated in January 2003. Since this request again meets all the other factors for possible reinstatement mentioned above, and his request is still within 60 months from January 2003, we will make a new determination on whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. Since the January 2005 request and the April 2004 request both request reinstatement on the same benefit that terminated in January 2003, and since we already paid Mr. K provisional benefits based upon the April 2004 request, we will not pay additional provisional benefits on the January 2005 request for reinstatement.

Example 2 —Assume the same facts as shown in Example 1 of this section, with the addition of these facts. We approve Mr. K's January 2005 request for reinstatement and start his reinstated benefits beginning February 2005. Mr. K subsequently returns to work and his benefits are again terminated due to his work activity in January 2008. Mr. K again stops work and requests reinstatement in January 2010. Since Mr. K meets the other factors for possible reinstatement (i.e., his prior eligibility was terminated within the last 60 months because of his work activity) we start paying him provisional benefits beginning February 2010 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2008.

(c) We will not pay you a provisional benefit for a month where you are not eligible for a payment under §§ 416.1322, 416.1323, 416.1325, 416.1327, 416.1329, 416.1330, 416.1334, and 416.1339.

(d) We will not pay you a provisional benefit for any month that is after the earliest of either: the month we send you notice of our determination on your request for reinstatement; or, the sixth month following the month you requested expedited reinstatement.

(e) You are not eligible for provisional benefits if—

(1) Prior to starting your provisional benefits we determine that you do not meet the requirements for reinstatement under §§ 416.999a(a); or

(2) We determine that your statements on your request for reinstatement, made under § 416.999b(d)(2), are false.

(f) Determinations we make regarding your provisional benefits under paragraphs (a) through (e) of this section are final and are not subject to administrative and judicial review under subpart N of part 416.

(g) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission.

(h) If we determine you are not eligible to receive reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (d) of this section will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 416.999a. If we inadvertently pay you provisional benefits when you are not entitled to them because we have already made a determination described in paragraph (e) of this section, they will be subject to recover as an overpayment under subpart E of part 416.

§ 416.999d How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 416.999a(a), we will reinstate your benefits with the month after the month you filed your request for reinstatement. We cannot reinstate your eligibility for any month prior to February 2001.

(b) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs in §§ 416.401 through 416.435. We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month equals or exceeds the reinstated benefit due, we will treat the difference as an overpayment under § 416.536.

(c) Once you have been reinstated under § 416.999a you cannot be reinstated again until you have completed a 24-month initial reinstatement period. Your initial reinstatement period begins with the

month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you are due a cash benefit of any amount for the month based upon our normal computation and payment rules in § 416.401 through § 416.435 or if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Social Security Act. If your entire benefit payment due you for a month is adjusted for recovery of an overpayment under § 416.570 and § 416.571 or if the amount of the provisional benefit already paid you for a month exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider the month a payable month.

(d) Your eligibility for reinstated benefits ends with the month preceding the earliest of the following months—

(1) The month an applicable terminating event in §§ 416.1331 through 416.1339 occurs;

(2) The third month following the month in which your disability ceases; or

(3) The month in which you die.

(e) Determinations we make under this section are initial determinations under § 416.1402 and are subject to review under subpart N of part 416.

(f) If we determine you are not eligible for reinstated benefits, we will consider your request filed under § 416.999a(a) your intent to claim benefits under § 416.340.

Subpart N—[Amended]

■ 7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

■ 8. Amend § 416.1403 by revising paragraphs (a) (19) and (20), adding paragraph (a) (21), and revising paragraphs (b)(1) and (2) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(19) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 416.590 and 422.310 of this chapter);

(20) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title XVI of the Social Security Act (see part 422, subpart E, of this chapter); and

(21) Determining when provisional benefits are payable, the amount of the provisional benefit payable, and when provisional benefits terminate (see § 416.999c).

(b) * * *

(1) If you receive an emergency advance payment; presumptive disability or presumptive blindness payment, or provisional payment, we will provide a notice explaining the nature and conditions of the payments.

(2) If you receive presumptive disability or presumptive blindness payments, or provisional payments, we shall send you a notice when those payments are exhausted.

* * * * *

[FR Doc. 05–19529 Filed 9–29–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Powered Industrial Trucks

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 1900 to § 1910.999, revised as of July 1, 2005, in § 1910.178, on page 545, remove paragraphs (m)(12)(i), (ii), and (iii).

[FR Doc. 05–55511 Filed 9–29–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–107]

RIN 1625–AA08

Special Local Regulations for Marine Event; John H. Kerr Reservoir, Clarksville, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for ''Clarksville Hydroplane Challenge'', a power boat race to be held on the waters of the John H. Kerr Reservoir adjacent to Clarksville, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the power boat race.

DATES: This rule is effective from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–107 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; John H. Kerr Reservoir, Clarksville, VA'' in the **Federal Register** (70 FR 52052). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

On October 1 and 2, 2005, the Virginia Boat Racing Association will sponsor the ''Clarksville Hydroplane Challenge'', on the waters of the John H. Kerr Reservoir. The event will consist of approximately 60 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of John H. Kerr Reservoir. Since no comments were received, no changes to this regulation were made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the John H. Kerr Reservoir during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005. Although the regulated area will apply to the entire width of the reservoir adjacent to Occoneechee State Park, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that paragraph. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add temporary § 100.35–T05–107 to read as follows:

§ 100.35–T05–107, John H. Kerr Reservoir, Clarksville, Virginia.

(a) Regulated area. The regulated area is established for the waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge. All coordinates reference Datum NAD 1983.

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

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

(3) *Participant* includes all vessels participating in the Clarksville Hydroplane Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations:*

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

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

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

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

(d) Enforcement period. This section will be enforced from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005.

Dated: September 22, 2005.

S. Ratti,

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

[FR Doc. 05–19586 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–105]

RIN 1625–AA08

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

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

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–105 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Room 119, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 29, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Choptank River, Cambridge, MD'' in the **Federal Register** (70 FR 50997). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area.

Advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

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

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Choptank River. Since no comments were received, no changes to this regulation were made.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit this section of the Choptank River during the event.

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

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

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

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

(b) *Definitions.*

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

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

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

(c) *Special local regulations.*

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

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

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

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

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

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

Dated: September 21, 2005.

S. Ratti,

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

[FR Doc. 05–19585 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–122]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, Washington, DC.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Potomac River. This action is necessary to provide for the safety of life and property during a fireworks display on the Potomac River. The safety zone will allow for control of designated areas of the river and safeguard spectators and participants.

DATES: This rule is effective from 7:30 p.m. to 10 p.m. on October 1, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–122 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Coast Guard Sector Baltimore, at (410) 576–2674.

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 and delaying its effective date would be contrary to public interest, since there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display from a barge, such as premature detonation or falling burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This safety zone of short duration is needed to provide for the safety of persons and vessels on the Potomac River.

Background and Purpose

On October 1, 2005, The Kennedy Center of Performing Arts in Washington, DC will sponsor an event entitled ''Festival of China'' that will include a fireworks display launched from two barges located on the Potomac River, approximately 1,000 feet upstream of the Theodore Roosevelt Memorial Bridge, in Washington, DC. A fleet of spectator vessels is anticipated for this event. Due to the need for vessel control during the fireworks display, vessel traffic will be restricted to provide for the safety of spectators and transiting vessels.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to a fireworks display from a barge. This rule establishes a safety zone on the waters of the Potomac River in Washington, DC, approximately 1,000 feet upstream of the Theodore Roosevelt Memorial Bridge, within a radius of 200 yards around two fireworks barges which will be located at position latitude 38°53′ 45.7″ N, longitude 077°03′ 31.6″ W.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Potomac River. The safety zone will be in effect from 7:30 p.m. to 10 p.m. on October 1, 2005. This safety zone will protect spectators and mariners transiting the area from the potential hazards associated with a fireworks display launched from a barge on the Potomac River. This rule limits access to the safety zone to those vessels authorized by the Captain of the Port Baltimore. Except for persons or vessels authorized by the Captain of the Port Baltimore, no person or vessel may enter or remain in the zone. The Captain of the Port will notify the maritime community via marine broadcasts of the safety zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Potomac River from 7:30 p.m. to 10 p.m. on October 1, 2005. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for two-and-a-half hours, commercial vessel traffic in this area is limited, vessels not constrained by their draft may proceed safely around the safety zone, and the Coast Guard will issue maritime advisories to users of the river before the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction, from further environmental documentation. This rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–122 to read as follows:

§ 165.T05–122 Safety zone; Fireworks Display, Potomac River, Washington, DC.

(a) Location. The following area is a safety zone: All waters of the Potomac River in Washington, DC, surface to bottom, within a radius of 200 yards around two fireworks barges which will be located approximately 1,000 feet upstream of the Theodore Roosevelt Memorial Bridge, at position latitude 38°53′45.7″ N, longitude 077°03′31.6″ W. All coordinates reference Datum NAD.

(b) Definition. The Captain of the Port Baltimore means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(c) Regulations. The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (a) of this section.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Captain of the Port, Baltimore, Maryland.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or by marine band radio on VHF channel 16 (156.8 MHz).

(3) All Coast Guard vessels enforcing this safety zone can be contacted on marine band radio VHF channel 16 (156.8 MHz).

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Effective period. This section is effective from 7:30 p.m. to 10 p.m. on October 1, 2005.

Dated: September 19, 2005.

Jonathan C. Burton,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 05–19584 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7977–4]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Montana has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements for Final authorization and is authorizing the State's changes through this immediate Final action. EPA is publishing this rule to authorize the changes without a prior proposed rule because we believe this action is not controversial. Unless we get written comments opposing this authorization during the comment period, the decision to authorize Montana's changes to their hazardous waste program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the State's changes.

DATES: We must receive your comments by October 31, 2005. Unless EPA receives comments that oppose this action, this Final authorization approval will become effective without further notice on November 29, 2005.

ADDRESSES: Submit your comments by one of the following methods: 1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments. 2. E-mail: *shurr.kris@epa.gov*. 3. Mail: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St, Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. 4. Hand Delivery or Courier: to Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St, Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

Instructions: Do not submit information that you consider to be Confidential Business Information (CBI) or information that should be otherwise protected from disclosure through regulations.gov, or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy Montana's application at the following addresses: MDEQ from 9 a.m. to 4 p.m., 1520 E 6th Ave, Helena, MT 59620, contact: Bob Martin, phone number (406) 444–4194 and EPA Region 8, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, CO 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Montana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Montana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Montana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out those portions of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Montana, including issuing permits, until Montana is authorized to do so.

C. What is the Effect of Today's Authorization Decision?

The effect of this decision is that facilities in Montana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements. Montana has primary enforcement responsibility under its state hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and require monitoring, tests, analyses, or reports; and enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which Montana is being authorized are already effective and are not changed by today's action.

D. Why Wasn't There A Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because this action is a routine program change, and we do not expect comments opposing this approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive comments opposing this authorization, that document will serve as a proposal to authorize the changes.

E. What Happens If EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, we will withdraw this rule by publishing a notice in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. What Has Montana Previously Been Authorized For?

Montana initially received Final authorization on July 11, 1984, effective July 25, 1984 (49 FR 28245) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 11, 1984, effective September 25, 1985 (49 FR 28245), January 19, 1994, effective March 21, 1994 (59 FR 02752), and December 26, 2000, effective December 26, 2000 (65 FR 81381).

G. What Changes Are We Authorizing With Today's Action?

On July 28, 2005, Montana submitted a final revision application, seeking

authorization of program changes in accordance with 40 CFR 271.21.

We now make an immediate final decision, subject to receipt of written comments opposing this action, that Montana's hazardous waste program revision satisfies all of the requirements necessary for Final authorization. Therefore, we grant Montana final authorization for its entire Hazardous Waste Program, excluding the broader-in-scope provisions, as found at Administrative Rules of Montana (ARM), Title 17, Chapter 53, effective March 9, 2005, which incorporated 40 CFR parts 124 and 260 through 268, 270, 273, and 279, effective July 1, 2004. Montana has revised it's entire program using a method that incorporates the Federal Program by reference. This method clearly indicates where the State's requirements are more stringent or broader-in-scope than the Federal requirements. EPA is also approving changes to the State's Availability of Information requirements (AI), as well authorizing the State for the Exceptions to Blending and Burning of Hazardous Waste requirements [RCRA section 3004(q)(2)(A), (r)(2) and (r)(3), as codified in 40 CFR 261.4(a)(12)(i)&(ii)] (Non-Checklist Item BB).

In addition to the changes authorized above, EPA is also approving changes to the State's procedural and enforcement provisions. EPA reviewed these provisions in order to determine the adequacy of Montana's procedural and enforcement authorities to operate the hazardous waste program. In compliance with the requirements of 40 CFR 271.16(a)(3)(ii), Montana has revised its provisions at Montana Code Annotated Section 75–10–418 to obtain criminal penalties for used oil violations (Non-Checklist Item CP), as well as hazardous waste violations. State procedural and enforcement provisions are not authorized by EPA and do not supplant the Federal procedural and enforcement provisions. EPA relies on Federal procedural and enforcement authorities rather than the State analogs to these provisions. Montana's procedures to implement the State's hazardous waste management program requirements continue to operate independently under State law. The following State procedural and enforcement authorities are included as part of this action for informational purposes and are not part of the State's program that operate in lieu of EPA: Montana Code Annotated 2005, sections 2–3–101 et seq., 2–3–221, 2–4–103, 2–4–315, 2–6–101 et seq., 2–15–3501 et seq., 27–30–204, 30–14–402 et seq., 75–10–107, and 75–10–401 et seq.; and Montana Rules of Civil Procedure, Rule 24(a).

H. Where Are the Revised State Rules Different From the Federal Rules?

The State has not adopted the following Federal rules: 40 CFR 260.20, 260.21, 260.22, and 260.23. (See ARM 17.53.401.) While this does not make the State more stringent, the regulated community must apply to the Regional office and comply with the Federal requirements for petitions, including delisting petitions, addressed by these rules. The State does not adopt any provision associated with the regulation of underground injection; instead, the responsibility for this part of the program is left with EPA (see 17.53.102(3), 17.53.802(2), 17.53.902(18), 17.53.1202(16) and 17.53.1202(18)). The State also has not adopted the permit by rule requirements for ocean disposal barges, because the State is landlocked and the provisions do not apply to the State.

The State has requirements that are more stringent than the Federal rules at (references are to the Administrative Rules of Montana, Title 17): 17.53.502(2), 17.53.602(2), 17.53.602(3), 17.53.603, 17.53.802(5), 17.53.803, 17.53.902(6), 17.53.903 and 17.53.1202(11) require annual rather than biennial reports; 17.53.803(1)(f)(iii) requires the most recent corrective action cost estimate to be submitted in the annual report; 17.53.702(2) through (4), 17.53.704 and 17.53.706 through 708 contain additional requirements for transfer facilities; 17.53.602(7) and (8) require the primary exporter to also file a report with the Montana Department of Environmental Quality; 17.53.602(9) gives both EPA and the State the authority to extend the record retention period; 17.53.1002(1), 17.53.1002(6) and 17.53.1003 prohibit certain wastes, including the dioxin wastes, from being burned in a Boiler and Industrial Furnace (BIF); 17.53.1002(2) and 17.53.1004 require that BIFs also perform background and periodic testing of soils and water in addition to the 40 CFR 266.102 requirements; 17.53.1002(4) does not allow the 40 CFR 266.102(e)(3)(ii) exemption from the particulate standards for BIFs and adds a provision that gives the Montana Department of Environmental Quality the discretion to require a BIF owner/operator submit, in conjunction with the permit application, a plan that will require cessation of hazardous waste burning during prolonged inversion conditions; 17.53.1002(5) requires annual stack emissions in addition to 40 CFR 266.102(e)(8)(i)(C); 17.53.1002(7) does not allow the 40 CFR 266.105(b) waiver from the BIF particulate matter standard; and 17.53.1002(6) and 17.53.1002(8) do not allow the 40 CFR 266.109 low risk exemption and the § 266.110 waiver of the DRE trial burn for boilers; 17.53.1202(10) does not allow the submission of data in lieu of a trial burn as per 40 CFR 270.22(a)(1)(ii) and 270.22(a)(6); 17.53.1202(14) and (15) require that the term of a Boiler and Industrial Furnace permit be only five years and the permit may be modified to assure that the facility is in compliance with the current applicable requirements. The State does not allow interim status for BIFs; thus, does not adopt 40 CFR 266.103 and the language associated with it in 40 CFR part 266 (see 17.53.1002(3)), as well as 40 CFR 270.66(g) (see 17.53.1202(19)).

We also consider the State requirements to be broader-in-scope than the Federal program at: 17.53.111(2), 17.53.112, 17.53.113 and 17.53.1202(5)(l) and (17), because the State requires permit application fees as well as registration fees; 17.53.703 is also broader-in-scope because it requires that transporters obtain a registration from the state. Broader-in-scope requirements are not part of the authorized program, and EPA cannot enforce them. Although a facility must comply with these requirements in accordance with State law, they are not RCRA requirements.

EPA cannot delegate the Federal requirements at 40 CFR part 262, subparts E and H, §§ 268.5, 268.6, 268.42(b), and 268.44(a) through (g). EPA will continue to implement these requirements. Additionally, the State has chosen not to adopt 40 CFR 268.44(h) through (m); the responsibility for these requirements also remains with EPA.

I. Who Handles Permits After This Authorization Takes Effect?

Montana will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to Montana within 30 days of this approval. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA and Montana have agreed to joint permitting and enforcement for those HSWA requirements for which Montana is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Montana?

Montana is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

A. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of Montana:

a. Blackfeet Indian Reservation.

b. Crow Tribe of Montana Indian Reservation.

c. Flathead Indian Reservation.

d. Fort Belknap Indian Reservation.

e. Fort Peck Indian Reservation.

f. Northern Cheyenne Indian Reservation.

g. Rocky Boy's Indian Reservation.

B. Any land held in trust by the U.S. for an Indian tribe, and

C. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program in these lands.

K. What is Codification and is EPA Codifying Montana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart BB for this authorization of Montana's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. 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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective November 29, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-reference, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 22, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–19619 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7977–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Deletion of the Batavia Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the Batavia Landfill Superfund Site (Site), located in the Town of Batavia, Genesee County, New York, from the National Priorities List (NPL) and will consider public comment on this action.

The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated

pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. This Direct Final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that potentially responsible parties have implemented all appropriate response actions required. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health or the environment.

DATES: This direct final deletion will be effective November 29, 2005 unless EPA receives significant adverse comments by October 31, 2005. If significant adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Michael Walters, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308,

Hours: 9 a.m. to 5 p.m., Monday through Friday;

Batavia Town Hall, 3833 West Main Street Road, Batavia, New York 14020, Telephone Number (585) 343–1729, Hours: 9 a.m. to 8 p.m., Monday through Friday.

Richmond Public Library, 19 Ross Street, Batavia, New York 14020, Mon., Tues., Thurs. 9 a.m. to 9 p.m., Wed. 9 a.m. to 6 p.m., Fri. 9 a.m. to 5 p.m. Closed on Saturday and Sunday, Telephone (585) 343–9550.

FOR FURTHER INFORMATION CONTACT: Michael Walters, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4279; Fax Number (212) 637–4284; E-mail address: *Walters.Michael@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 2 announces the deletion of the Batavia Landfill Superfund Site from the NPL. The EPA maintains the NPL as the list of those sites that appear to present a significant risk to public health, welfare, or the environment. As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at the deleted site warrant such action.

EPA considers this action to be noncontroversial and routine, and therefore, EPA is taking it without prior publication of a Notice of Intent to Delete. This action will be effective November 29, 2005 unless EPA receives significant adverse comments by October 31, 2005 on this action or the parallel Notice of Intent to Delete published in the Notice section of today's **Federal Register**. If significant adverse comments are received within the 30-day public comment period, EPA Region 2 will publish a timely withdrawal of this Direct Final Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Batavia Landfill Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, shall consider whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9261(c) requires that a subsequent review of the site be conducted at least every five years after initiation of the remedial action at the deleted site to ensure that the action remains protective of human health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Based upon Section 300.425(e)(3) of the NCP, whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. EPA proposes to delete this Site because potentially responsible parties have implemented all appropriate response actions.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

(1) The Site was listed on the NPL in September 1983.

(2) In August 1984, EPA entered into an Administrative Order on Consent with NL Industries for the performance of the Remedial Investigation/Feasibility Study (RI/FS) for the Site.

(3) The RI Report was completed in 1992, the FS Report in 1994.

(4) On March 31, 1993, EPA signed a Record of Decision (ROD) selecting an interim remedy for the Site which required the extension of the municipal water supply system to residents affected or potentially affected by the Site.

(5) On September 21, 1993, EPA issued a Unilateral Administrative Order to the Potentially Responsible Parties (PRPs) directing them to implement the interim remedy.

(6) On January 30, 1996, EPA formally approved the completion of the extension of the municipal waterline system and connection of the homes.

(7) On June 6, 1995, EPA issued a ROD which selected a final remedy for the Site which included engineered and institutional controls.

(8) The first Five-Year Review was signed by EPA on June 30, 2000.

(9) On July 10, 2003, EPA determined that the engineered controls had been constructed. A final Remedial Action Report was approved on September 26, 2003.

(10) In June 2005, institutional controls were recorded with the Genesee County Register of Deeds.

(11) The EPA consulted with the NYSDEC on the deletion of this Site and NYSDEC concurred with the deletion of

the Site from the NPL on September 13, 2005.

(12) Concurrently with the publication of this Direct Final Deletion, a parallel Notice of Intent to Delete has been published today in the Notice section of the **Federal Register**. Notices are also being published in local newspapers and appropriate notice is being provided to federal, state, and local government officials and other interested parties.

(13) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

If no significant adverse comments are received, the Site will be deleted. If significant adverse comments are received within the 30-day public comment period on this action, EPA will publish a timely notice of withdrawal of this deletion before its effective date. EPA will prepare, if appropriate, a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take appropriate enforcement actions.

IV. Basis for Site Deletion

The following summary provides a brief description and actions taken at the Batavia Landfill Superfund Site which provides the Agency's rationale for recommending deletion of the Site from the NPL.

The Batavia Landfill Superfund Site (the Site or the Landfill) is located in the Town of Batavia, Genesee County, approximately three miles west-northwest of the City of Batavia, New York. The Site is approximately 35 acres in area and is bounded to the north and portions of the east by the Galloway Swamp, to the east by the Town's former Sanitary Landfill (now closed), to the south by Harloff Road (the New York State Thruway is approximately 200 feet south of the Landfill), and to the west by vacant property. The Town of Batavia owns the Site and the adjoining sanitary landfill to the east.

The Landfill accepted wastes, including industrial wastes, for on-site disposal from 1968 until 1980, when the NYSDEC declared the property an open dump based on noncompliance with surface water criteria (40 CFR Part 257). Poor housekeeping practices and the disposal of industrial and hazardous wastes resulted in the closure of the Landfill.

During the active years of waste management approximately 800,000 cubic yards of industrial wastes have been disposited at the Site. In December 1982, Fred C. Hart Associates, under contract with EPA, conducted a groundwater sampling survey in the area of the Site. Sampling data from on-site monitoring wells revealed the presence of hazardous organic and inorganic chemical constituents (including methylene chloride, 1,1 dichloroethane, and barium) which exceeded New York State and Federal drinking water standards.

On December 20, 1982, the Site was proposed for inclusion on the NPL and was added to the NPL by publication in the **Federal Register** on September 8, 1983 (48 FR 40658).

On August 9, 1984, EPA entered into an Administrative Order on Consent (AOC) with NL Industries, a Potentially Responsible Party (PRP), for the performance of a RI/FS at the Site.

A residential well program conducted by the New York State Department of Health in 1992 at homes in close proximity to the Site revealed levels of contaminants in the wells above the Federal Maximum Contaminant Levels. A subsequent risk assessment performed by EPA revealed that the continued ingestion of the groundwater posed a significant endangerment to the area residents.

On March 31, 1993, EPA signed a Record of Decision (ROD) selecting an interim remedy for the Site which required the extension of the municipal water supply system to residents affected or potentially affected by the Site.

On September 21, 1993, EPA issued a Unilateral Administrative Order to the PRPs directing them to implement the interim remedy outlined in the 1993 ROD. On January 30, 1996, EPA approved the completion of the replacement and/or retrofitting of residential groundwater well piping systems with new piping and appurtenances connecting each home to the waterline.

On June 6, 1995, EPA selected the final remedy: (a) The excavation of approximately 50,000 cubic yards of contaminated soil from the northern area of the Landfill and consolidation of these materials under a landfill cap in the southern area of the Landfill; (b) excavation of approximately 150 drums from the southern area of the Landfill and their off-site treatment and disposal; (c) construction of a cap over the southern region of the Landfill; (d) the restoration of the surrounding wetlands at the Landfill impacted by past waste disposal activities; and, (e) establishment of institutional controls to preclude certain uses of the property.

In September 1995, EPA issued an AOC for the performance of the remedial design (RD) for the site remedy. The RD was completed in December 1999. The site remedy was modified on September 16, 1999 in an Explanation of Significant Difference (ESD) which called for the excavation and removal of 126,000 cubic yards of contaminated soils from the northern and central areas of the Site, an increase of 76,000 cubic yards of wastes from the previous estimate.

The final landfill cap, constructed in the southern area of the Site, covers an approximate area of 15.5 acres and is consistent with New York State hazardous waste management regulations. Approximately 210,000 cubic yards of excavated wastes from the northern, central and wetland areas of the Site were consolidated under the southern area landfill cap. The landfill cap was constructed with 18 inches of compacted clay, a drainage and leachate collection system, a gas venting system and a 24-inch barrier protection layer of soil and 6 inches of topsoil suitable to maintain vegetative growth.

A perimeter chain-linked fence around the Site, including three access gates, has been installed. Approximately seven acres of waste-impacted wetlands (including some areas of standing water which support a submergent vegetative community) were remediated and restored during the conclusion of remedial construction activities in September and October 2002.

Institutional controls have been put in place at the Site to restrict future activities at the Site that may negatively impact the effectiveness of the implemented site remedy or threaten human health and the environment. These site restrictions include a ban on the construction of drinking water wells and new building structures that may impede the effectiveness of the landfill cap systems.

Implementation of the interim and final remedies have utilized permanent solutions in the effective short-term and long-term abatement of the human health and ecological risks posed by the Site. The final remedy is reducing the toxicity, mobility, and volume of contaminants by reducing infiltration through the landfilled wastes and collecting and treating the leachate. In addition, the final remedy also involved the remediation and restoration of seven acres of wetlands at the Site.

EPA has determined that all appropriate response measures under the Comprehensive Environmental Response, Compensation, and Liability

Act have been implemented and that no further cleanup is required. The Site poses no significant threat to public health or the environment. Consequently, this Site no longer needs to be listed on the NPL; however, this decision does not preclude future actions under Superfund should they become necessary.

A Remedial Action Work Plan (RAWP) for the implementation of long-term operation and maintenance for the landfill cap systems is in place. The Town of Batavia is required to manage the required operation and maintenance (O&M) activities in accordance with the RAWP. Required O&M activities include the long-term implementation of a semi-annual groundwater monitoring program, periodic Site inspections, and regular landfill cap maintenance activities. The inspections are required to ensure and maintain the operational effectiveness and structural integrity of the Site remedy to protect human health and the environment.

Institutional controls consisting of an easement and deed restriction limiting access to the Site and preventing the use of contaminated water as a drinking source were filed with the Genesee County Register of Deeds on June 10, 2005.

Public participation activities for this Site have been satisfied as required by CERCLA Section 113(k), 42 U.S.C. 9613(k), and, CERCLA Section 117,42 U.S.C. 9617. The RI/FS and the 1993 and 1995 RODs were both subject to the public review process. All documents and information which EPA relied on or considered in reaching the conclusion that this Site can be deleted from the NPL are available for the public to review at the information repositories.

The final remedy implemented at this Site results in contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure. In accordance with CERCLA Section 121(c), EPA and/or NYSDEC will conduct a review of this remedy no less often than every five years. A first Five-Year Review Report for the Site was completed in June 2000. EPA has determined that the remedies protect public health and the environment and that they function as intended by the decision documents. All construction activities for the Site required by the final ROD were completed in July 2003. A second Five-Year Review was completed in September 2005.

One of the three criteria for site deletion specifies that a site may be deleted from the NPL if ''responsible parties or others parties have implemented all appropriate response actions required.'' [40 CFR 300.425(e)(1) (i)]. EPA, with concurrence of the State of New York, through the NYSDEC, believes that this criterion for deletion has been met and therefore, EPA is deleting this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 21, 2005.

Alan J. Steinberg,

Regional Administrator, U.S. EPA Region II.

■ For the reasons set out in the preamble Part 300 Title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

■ The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O.12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under New York (NY) by removing the site name ''Batavia Landfill'' and the corresponding city designation ''Town of Batavia.''

[FR Doc. 05–19613 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7976–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of partial deletion of the Jacobs Smelter Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final notice of partial deletion of the Jacobs Smelter Superfund Site from the National Priorities List (NPL). Specifically EPA intends to delete Operable Unit 3 from the site, comprised only of soils within the Union Pacific Rail Road (UPRR) right-of-way in Tooele County, Utah.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). The EPA is publishing this direct final notice of partial deletion with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ) because the EPA has determined that all appropriate response actions under CERCLA have been completed at these properties and, therefore, further remedial action pursuant to CERCLA is not appropriate.

This partial deletion pertains to Operable Unit 3 described in section IV of this document and does not alter the status of any other portion of the Jacobs Smelter Superfund Site. Operable Unit 1 was deleted from the NPL in 2001.

DATES: This direct final partial deletion will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Comments may be mailed to Jennifer Lane, Community Involvement Coordinator, U.S. EPA Region 8 (8OC), 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6813.

Information Repositories:

Comprehensive information about the site is available for viewing and copying at the site information repositories located at:

U.S. Environmental Protection Agency Region 8 Records Center, 999 18th St., Suite 300, Denver, CO 80202–2466, Hours: Monday–Friday, 8:30 a.m. to 4:30 p.m.

Tooele City Public Library, 128 West Vine Street, Tooele, UT 84074, Hours: Tuesday–Friday 11 a.m. to 7:30 p.m.; Saturday 10:30 a.m. to 6 p.m.

Utah Department of Environmental Quality, 168 North 1950 West, 1st Floor, Salt Lake City, UT 84116, (801) 536–4400, Hours: Monday–Friday, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Lisa Lloyd, Remedial Project Manager (8EPR–SR), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6537.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 8 is publishing this direct final notice of partial deletion of the Jacobs Smelter Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites or areas within sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to partially delete. This action will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005 on this notice or the parallel notice of intent to partially delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting, or partially deleting, sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the UPRR right-of-way property that EPA intends to delete from the Jacobs Smelter Superfund Site and demonstrates how it meets the partial deletion criteria. Section V discusses EPA's action to partially delete the site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete, or partially delete, a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required;

ii. Section 300.425(e)(1)(ii): All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response action under CERCLA has been implemented and no further response action by responsible parties is appropriate; or

iii. Section 300.425(e)(1)(iii): The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is partially deleted from the NPL, if hazardous substances, pollutants or contaminants remain in place at the deleted portion of the site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review be conducted at least every five years after the initiation of the remedial action at the deleted portion of the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate or require further remedial actions. Whenever there is a significant release from a site (or portion thereof) deleted from the NPL, the deleted area or site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the partial deletion:

(1) The EPA consulted with the State of Utah on the partial deletion of the site from the NPL prior to developing this direct final notice of partial deletion.

(2) The State of Utah concurred with the partial deletion of the site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to partially delete was published today in the ''Proposed Rules'' section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to partially delete the site from the NPL.

(4) The EPA placed copies of documents supporting the deletion of these properties in the site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of partial deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion or partial deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion or partial deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions. Section 300.425(e)(3) of the NCP governs partial deletion of a site from the NPL in the same manner.

While EPA does not believe that any future response action within Operable Unit 3 will be needed, if future conditions warrant such action, this deleted area will remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of any remaining portions of the Jacobs Smelter Superfund Site, which are not proposed for deletion and remain on the NPL. The residential portion of Operable Unit 1 was deleted from the NPL in 2001.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the portion of the site referred to above from the NPL.

A. Site Location

The Jacobs Smelter Superfund Site Operable Unit 3 is a long irregularly shaped property consisting of the Union Pacific Railroad right-of-way, 1,625 feet in length and varying in width from 50 to 450 feet with an average width of 200 feet. An active mainline railroad bisects this 9-acre site from north to south. One of the major roads, Silver Avenue, crosses the right-of-way from east to west. The site is relatively level and vegetated with native grasses and scrubby trees. Several older concrete foundations of removed buildings and one possible water tower base are evident. The only other onsite structures are two small signal houses.

B. Site History

The Stockton Yard (OU3) is located within the Jacobs Smelter Superfund

Site. Several mining and smelting facilities were constructed in and near the town of Stockton in the early 1870's. The Jacobs Smelter was located in the town of Stockton near the current location of the Stockton Yard. Contamination on OU3 is likely the result of sediments entrained in process water that was allowed to flow down-gradient across the rail road right of way as well as spillage from an ore-loading facility that was built for the transportation of ores to other mills and smelters.

The railroad property was cleaned up in 1999. UPRR, under an agreement with the EPA, removed all debris and large vegetation (bushes and trees), placed a 16-inch soil cover over the contaminated soils in their right-of-way, fertilized the soil cap, and seeded with a mixture of indigenous grass seed.

Concrete foundations onsite were left in place. Following removal of vegetation from the site, a limited amount of grading was performed to smooth out uneven areas of the site. In general, soil surfaces were kept moist to reduce the potential for spreading contaminated soil and also to ease handling and placement of material.

UPRR built 6' fences along the edge of Silver Avenue and Plaza Street. A 16-ft-wide gravel access road was also constructed along the length of the east and west sides of the railroad track between the railroad ballast and the soil cap. The road was developed using a 4-inch layer of crushed rock.

C. Characterization of Risk

Arsenic is a human carcinogen. Arsenic can be acutely and chronically poisonous and can be fatal if ingested or inhaled in sufficient quantities by humans, livestock and wildlife. Arsenic compounds are absorbed into the body primarily through inhalation or ingestion.

Lead is a cumulative poison which can cause neurologic, kidney and blood cell damage in humans. Some lead compounds are also animal carcinogens adversely affecting the lungs and kidneys. Children under the age of seven years are especially sensitive to the effects of lead. Lead carbonate, which is the type of lead found at the site, is very bio-available. Bio-availability is an indication of how easily lead is absorbed into the body, thus lead at the site is readily absorbed.

These metals are hazardous substances, as defined by section 101 (14) of CERCLA. They appear to have been released into the soils along the railroad track by historic smelting activities and spread through the community by water drainage and possibly aerial deposition.

Because arsenic contamination is found along the railroad track in areas that are surrounded by residences, there is also a potential for contaminated soil to be wind-blown and dust-sized particles to be transported by wind and human activities into yards and into homes. Also, children play along the tracks.

UDEQ collected soil and sediment samples from the Stockton area in July of 1997. The analysis of samples from the area at and around Jacobs Smelter detected arsenic and lead levels as high as 6,550 parts per million (ppm) and 68,400 ppm respectively.

Sampling on the UPRR property revealed high concentrations of lead in several lots east of the railroad tracks. Concentrations of lead ranged as high as 4,800 ppm near the edge of a suspected settling pond to 12,000 ppm near an area described as an old railroad loading dock.

D. Site Investigations

In August 1998, EPA Region 8 conducted a screening investigation of site (OU3) surface soils to evaluate potential lead and arsenic contamination. This investigation identified lead in soils at concentrations ranging from 837 to 12,000 parts per million (ppm). Due to its collocation with the lead, an analysis for arsenic was also conducted and results appeared correlated. The PRP Removal Action Memorandum of February 2, 1999 identified both lead and arsenic as contaminants of concern.

In February 1999 further investigation was conducted on the east side of the Stockton Yard railroad lines to delineate lead contamination. The site was broken up into 20 sampling zones; 2 to 4 samples were collected within each zone and composited. Surface soil samples collected from the 20 zones ranged from 14 to 23,902 ppm total lead.

On June 11, 1999 additional investigations of lead in surface soils on the west side of the railroad lines were conducted. This area was divided into 11 sample zones, using the same grid configuration as the earlier work. The samples were collected as 3- to 4-point composites in 0–6'' intervals using the same protocol as outlined in the February 24, 1999 Site Investigation and Remedial Alternatives Report. Total lead concentrations ranged from 164 to 1,958 ppm.

The industrial action level set by the EPA was 1,200 ppm total lead. Based on sampling events, soils exceeding this 1,200-ppm cleanup level encompassed approximately 3.6 acres on the east side of the railroad tracks and approximately 0.70 acre on the west side of the tracks. In the February 1999 Site Investigation and Remedial Alternatives Report, cost estimates were presented for several remedial alternatives. Based on this information, EPA and UDEQ selected soil cover as the preferred alternative for the Stockton Yard.

E. Action Memorandum Findings

The purpose of the Enforcement Action Memorandum was to document the selected PRP Removal Action. The selected response action was to confine the affected soil beneath a soil cover and to fence off the area to reduce access by the public. The objectives were to preclude direct exposures and to reduce the potential for offsite migration of affected soil through air or water borne pathways.

F. Response Actions

Site preparation included the removal of large vegetation (e.g. bushes and trees) and debris (i.e. boulders, concrete chunks, trash) from the areas to be capped. Vegetation and debris were disposed of in the Tooele County Landfill. The concrete foundations remained on site.

The UPRR developed a plan of action for soils in excess of 1,200 ppm lead, including 3.6 acres on the east side and .70 on the west of the 9 acres in the right-of-way described in the agreement. That soil, adjacent to the track ballast, was compacted and capped with 12″ of clean soil (approximately 7,550 yards) and 4″ of top soil (approximately 2,300 yards). UPRR sowed the remediated area with a combination of wild rye, sagebrush and two grasses which were recommended for the local altitude and weather pattern. UPRR also built 6′ high chain link fences along the edge of Silver Avenue and Plaza Street.

In agreement with the EPA and UDEQ, UPRR filed in Tooele County a Declaration of Restrictions that limits the future use of the site.

G. Cleanup Standards

Cleanup standards for Operable Unit 3 were based on the IEUBK model data that showed elevated lead concentrations exceeded EPA's criteria. EPA and UDEQ selected soil cover as the preferred alternative for the Stockton Yard. The soil cap was placed over sections of the site that contained lead concentrations greater than 1,200 ppm.

H. Community Involvement

EPA established an Information Repository containing the Administrative Record and other

information about the site at the Tooele City Public Library, 128 West Vine Street, Tooele, Utah. Public interviews were conducted, ties with local officials were established, and an avenue created to address local questions and concerns through the appointment of a Community Involvement Coordinator.

Numerous community meetings were held to inform and invite public comment on site-wide remedies, and discussions included the cleanup of the UPRR right-of-way in January, March, May and June of 1999.

Public participation activities have been satisfied as required in sections 113(k), and 117 of CERCLA, 42 U.S.C. 9613(k) and 9617. Documents in the deletion docket, which EPA relied on for recommendation of the partial deletion from the NPL, are available to the public in the information repositories.

V. Partial Deletion Action

The EPA, with concurrence of the State of Utah, has determined that all appropriate responses under CERCLA for the referenced property have been completed and that no further response actions under CERCLA are necessary.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective November 29, 2005 unless EPA receives adverse comments by October 31, 2005 on a parallel notice of intent to delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and it will not take effect. EPA will simultaneously prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substance, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 21, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by revising the entry under Utah for ''Jacobs Smelter'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
* * * * *	*	*	*
UT	Jacobs Smelters	Tooele County	P.
* * * * *	*	*	*

a * * *

P = sites with partial deletion(s).

[FR Doc. 05–19626 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, 415, 419, 422, and 485

[CMS–1500–CN]

RIN 0938–AN57

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Correction

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors in the final rule that appeared in the August 12, 2005 **Federal Register** entitled ''Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates.''

DATES: Effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–15406 (70 FR 47278), the final rule entitled ''Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates'' (hereinafter referred to as the FY 2006 final rule), there were a number of typographical and technical errors that are identified and corrected in the ''Correction of Errors'' section (section III. of this notice). The provisions of this correction notice are effective as if they had been included in the FY 2006 final rule. Accordingly, the corrections are effective October 1, 2005.

II. Summary of the Corrections to the FY 2006 Final Rule

On page 47292, in our preamble discussion regarding cardiac catheterizations for DRGs 535 and 536, we stated that we are removing code 37.26 from DRGs 535 and 536 and then erroneously stated that we are adding code 37.26 to DRG 515. Therefore, we are revising this discussion by deleting the phrase ''and adding the code in DRG 515.'' (See item 2 of section III.A. of this notice.)

On page 47312, in our preamble discussion regarding the ''Tobacco Use Disorder Edit'', we stated the incorrect Medicare code editor (MCE) edit to which we added code 305.1. Although our national coverage determination on smoking cessation counseling services provides that we never cover tobacco cessation services when code 305.1 is reported as the principal diagnosis, we erroneously stated that code 305.1 would be added to the MCE edit ''Questionable Admission—Principal

Diagnosis Only.'' Therefore, we are revising this discussion by replacing the incorrect MCE edit, ''Questionable Admission—Principal Diagnosis Only,'' with the correct MCE edit, ''Unacceptable Principal Diagnosis.'' (See item 3 of section III.A. of this notice.)

On page 47444, in our preamble discussion regarding Medicare Geographic Reclassification Review Board (MGCRB) reclassification for urban hospitals, we made typographical errors in our citations to the regulations text. In addition, on pages 47486 and 47487, our amendment to the regulations text contained technical errors. In this notice, we are revising the relevant preamble and regulations text. (See item 7 of section III.A. and items 1 and 2a of section III.B. of this notice.)

On page 47445, we made incorrect references in our preamble discussion regarding the date by which the MGCRB has to make its reclassification decisions. We are revising this discussion to clarify that the MGCRB has 180 days in which to make its reclassification decision. (See item 8 of section III.A. of this notice.)

On pages 47477 and 47478, in the column heading of the chart displaying information regarding diagnosis-related groups (DRGs) that recognize major cardiovascular conditions (MCVs), we erroneously included new DRGs whose titles include ''without MCV.'' We are revising this heading to include only those DRGs that recognize MCVs. (See item 10 of section III.A. of this notice.)

On pages 47589 and 47596, in Table 4A, we made errors in the calculation of the wage indexes and geographic adjustment factors for 2 core-based statistical areas (CBSAs). Accordingly, we are correcting this table to include the correct wage indexes and geographic adjustment factors (GAFs) for these CBSAs. We are also correcting the wage index values listed in Table 2 for the affected providers. (See items 1 and 2 of section III.C. of this notice.) In addition, the wage index data for a provider were erroneously omitted from the wage index calculation. This error affects hospitals geographically located in and reclassifying to the Houston-Sugar Land-Baytown, TX CBSA. Accordingly, we are revising Tables 2, 4A, and 4C to reflect the correct information. (See items 1, 2, and 4 of section III.C. of this notice.) Similarly, another provider's wage data were erroneously omitted from the wage index calculation that affects hospitals geographically located in and reclassifying to the Nashville-Davidson-Murfreesboro, TN CBSA. Therefore, we are including the corrected data in Tables 2, 4A, and 4C. (See items 1, 2, and 4 of section III.C. of this notice.)

On page 47604 on Table 4B we made an error in the calculation of the wage index and geographic adjustment factor for rural Washington. (See item 3 of section III.C. of this notice.) Therefore, we are correcting the wage index and GAF values listed for the 5 CBSAs in Table 4A that receive the Washington rural floor and we are also correcting the wage index values listed in Table 2 for the affected providers (See items 1 and 2 of section III.C. of this notice).

On page 47611, in Table 4J, we made a number of typographical errors in a group of the provider numbers listed. In this notice, we are correcting these errors. (See item 5 of section III.C. of this notice.)

On page 47675, in Table 9A, we inadvertently reclassified a provider to the incorrect CBSA. In addition, in Table 2, we also inadvertently listed the incorrect wage index for this provider. Accordingly, we are revising both of these tables to reflect the correct information for this provider. (See items 1 and 8 of section III.C. of this notice).

We are also correcting typographical, formatting or other errors that appear on other pages of the FY 2006 final rule.

III. Correction of Errors

In FR Doc. 05–15406 (70 FR 47278), we are making the following corrections:

A. Corrections to Errors in the Preamble

1. On page 47289, third column, first full paragraph, line 34 the figure ''111'' is corrected to read ''115''.

2. On page 47292, first column, first partial paragraph, lines 1 and 2, the phrase ''and adding the code in DRG 515'' is deleted.

3. On page 47312, second column, second full paragraph, lines 26 and 27 the phrase ''Questionable Admission-Principal Diagnosis Only'' is corrected to read ''Unacceptable Principal Diagnosis''.

4. On page 47344,

a. Second column, first partial paragraph, line 1, the word ''criteria'' is corrected to read ''criterion''; and

b. Third column, first full paragraph, line 1, the word ''INFUSETM'' is corrected to read ''INFUSE''.

5. On page 47350, third column,

a. First partial paragraph, last line, the phrase ''Endovascular Stent Graft.'' is corrected to read ''Endovascular Stent Graft.)''; and

b. First full paragraph, line 48, the phrase ''could not longer be'' is corrected to read ''could no longer be''.

6. On page 47418, second column, first full paragraph, line 11, the date ''October 1, 2006'' is corrected to read ''October 1, 2005''.

7. On page 47444, first column, third full paragraph,

a. Line 21, the phrase ''will longer be'' is corrected to read ''will no longer be'';

b. Line 30, the citation ''§ 412.230(a)(5)(iv)'' is corrected to read ''§ 412.230(a)(5)(iii)''; and c. Line 34, the citation ''§ 412.230(a)(5)(iv)'' is corrected to read ''§ 412.230(a)(5)(iii)''.

8. On page 47445, second column, first paragraph,

a. Line 25, the date ''February 1'' is corrected to read ''180 days from the September 1 application due date''; and

b. Line 55, the date ''February 1, 2006'' is corrected to read ''180 days from the September 1 application due date''.

9. On page 47446, first column, third paragraph, line 22, the citation ''§ 412.230(d)(2)(iv)'' is corrected to read ''§ 412.230(d)(2)(iii)''.

10. On pages 47477 and 47478, in the chart, the fourth column, the header row, the heading ''DRGs 547, 548, 549, 550, 553, 554, 555, 556, 557, and 558'' is corrected to read ''DRGs 547, 549, 553, 555, and 557''.

B. Corrections to Errors in the Regulations Text

§ 412.230 [Corrected]

■ 1. On page 47486, third column, third line from the bottom, in the amendatory language for § 412.230, the phrase ''Revising paragraph (a)(5)(iv)'' is corrected to read ''Revising paragraph (a)(5)(iii)''.

■ 2. On page 47487, first column, a. Line 10, in § 412.230(a)(5), the paragraph number ''(iv)'' is corrected to read ''(iii)''.

C. Corrections to Errors in the Addendum

1. On pages 47510, 47524, 47531, 47552, 47561 through 47568, 47570 and 47571, in Table 2—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2004; Hospital Wage Indexes for Federal Fiscal Year 2006; Hospital Average Hourly Wages for Federal Fiscal Years 2004 (2000 Wage Data), 2005 (2001 Wage Data), and 2006 (2002 Wage Data); Wage Indexes and 3–Year Average of Hospital Average Hourly Wages, for the listed provider numbers, the FY 2006 Wage Index (column 3) is corrected to read as follows:

Provider No.	FY 2006 wage index
030012	0.9874
130065	0.9400
130067	0.9400
180013	0.9506

Provider No.	FY 2006 wage index
180066	0.9506
180124	0.9506
360095	0.9564
440003	0.9778
440006	0.9778
440029	0.9778
440035	0.9506
440039	0.9778
440046	0.9778
440053	0.9778
440059	0.9506
440065	0.9778
440073	0.9506
440082	0.9778
440111	0.9778
440133	0.9778
440148	0.9506
440150	0.9778
440151	0.9506
440161	0.9778
440175	0.9506
440186	0.9778
440192	0.9506
440193	0.9778
440194	0.9778
440197	0.9778
440200	0.9778
440218	0.9778
450018	0.9999
450035	0.9999
450068	0.9999
450072	0.9999
450097	0.9999
450126	0.9999
450184	0.9999
450187	0.9999
450193	0.9999
450211	0.9999
450214	0.9999
450222	0.9999
450253	0.9999
450289	0.9999
450296	0.9999
450330	0.9999
450347	0.9999
450358	0.9999
450378	0.9999
450417	0.9999
450418	0.9999
450424	0.9999
450438	0.9999
450446	0.9999
450484	0.9999
450530	0.9999
450591	0.9999
450610	0.9999
450617	0.9999
450630	0.9999
450638	0.9999
450644	0.9999
450659	0.9999
450670	0.9999
450684	0.9999
450694	0.9999
450709	0.9999
450716	0.9999
450774	0.9999
450775	0.9999
450795	0.9999
450803	0.9999
450804	0.9999
450820	0.9999
450831	0.9999
450832	0.9999
450844	0.9999
450847	0.9999
450848	0.9999
450860	0.9999
450862	0.9999
450870	0.9999
500002	1.0511
500007	1.0719
500012	1.0511
500019	1.0724
500033	1.0511
500036	1.0511
500037	1.0511
500049	1.0511
500122	1.0511
500147	1.0511
500148	1.0511

2. On pages 47589, 47591 through 47594, 47596, and 47602, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas by CBSA, for the listed CBSA codes, the wage index (column 3) and GAF (column 4) are corrected to read as follows:

CBSA code	Wage index	GAF
26420	0.9999	0.9999
26820	0.9400	0.9585
30300 (WA Hospitals)	1.0511	1.0347
31020	1.0511	1.0347
34580	1.0511	1.0347
34980	0.9778	0.9847
39140	0.9874	0.9914
48300	1.0511	1.0347
49420	1.0511	1.0347

3. On page 47604, in Table 4B—Wage Index and Capital Geographic Adjustment (GAF) for Rural Areas by CBSA, for the listed CBSA code, the wage index (column 3) and GAF (column 4) are corrected to read as follows:

CBSA code	Wage index	GAF
50	1.0511	1.0347

4. On pages 47605 and 47606, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified by CBSA, for the listed CBSA codes, the wage index (column 3) and GAF (column 4) are corrected or added to read as follows:

CBSA code	Area	Wage index	GAF
26420	Houston-Sugar Land-Baytown, TX	0.9999	0.9999
26820	Idaho Falls, ID	0.9400	0.9585
34980	Nashville-Davidson-Murfreesboro, TN	0.9506	0.9659

5. On page 47611, in Table 4J—Out-Migration Adjustment—FY 2006, the 23rd through 45th entries, the entries in the Published Provider No. column in the chart below are corrected in the Corrected Provider No. column to read as follows:

Published provider No.	Corrected provider No.
540022	150022
540030	150030
540035	150035
540045	150045
540060	150060
540062	150062
540065	150065
540076	150076
540088	150088
540091	150091
540102	150102
540113	150113
540122	150122
640013	160013
640026	160026
640030	160030
640032	160032
640080	160080
740137	170137
840012	180012
840066	180066
840127	180127
840128	180128

6. On page 47619, in Table 5—List of Diagnosis-Related Groups, Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS), the 11th and 12th entries, the DRG title (column 6) is corrected to read as follows:

DRG	DRG title
68	OTITIS MEDIA & URI AGE >17 W CC

DRG	DRG title
69	OTITIS MEDIA & URI AGE >17 W/O CC

7. On page 47638, in Table 6E—Revised Diagnosis Code Titles, the first entry, the CC (column 3) is corrected to read as follows:

Diagnosis code	CC
285.21*	N

8. On page 47675, in Table 9A—Hospital Reclassifications and Redesignations by Individual Hospital and CBSA—FY 2006, first set of entries, the 36th entry, the Reclassified CBSA is corrected to read as follows:

Provider No.	Reclassified CBSA
360095	45780

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive the notice and comment procedures if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice. We can also waive the 30-day delay in effective date under the APA (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

The policies and payment methodology expressed in the FY 2006 final rule have previously been subjected to notice and comment procedures. This correction notice merely corrects typographical and technical errors in the preamble, regulations text, and addendum of the FY 2006 final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correction notice is intended to ensure that the FY 2006 final rule accurately reflects the policies adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

For the same reasons, we are also waiving the 30-day delay in effective date for this correction notice. We believe that it is in the public interest to ensure that the FY 2006 final rule accurately represents our prospective payment methodology, payment rates, and policies. Thus delaying the effective date of these corrections would be contrary to the public interest. Therefore, we also find good cause to waive the 30-day delay in effective date.

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

Dated: September 27, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–19612 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1282–CN]

42 CFR Parts 411 and 424

RIN 0938–AN65

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

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

ACTION: Final rule; correction notice.

SUMMARY: This document corrects typographical and technical errors that appeared in the August 4, 2005 **Federal Register**, entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2006.''

EFFECTIVE DATE: October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Jeanette Kranacs, (410) 786–9385. Bill Ullman, (410) 786–5667. Sheila Lambowitz, (410) 786–7605.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–15221, (70 FR 45026), the final rule entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2006'' (hereinafter referred to as the FY 2006 final rule), there were a number of typographical and technical errors that are identified and corrected in section III. ''Correction of Errors'' below. The provisions of this correction notice are effective as if they had been included in the FY 2006 final rule. Accordingly, the corrections are effective on October 1, 2005.

II. Summary of the Corrections to the FY 2006 Final Rule

A. Corrections to the Preamble of the FY 2006 Final Rule

On pages 45046 and 45047, in the preamble discussion of the SNF market basket index, we inadvertently included incorrect values in the column labeled ''Relative importance, labor-related, FY 2005 (97 index).'' Therefore, we are revising the second column in Table 11 (''Labor-Related Relative Importance, FY 2005 and FY 2006'') to include the correct values for the labor share estimate for FY 2005 based on the 2nd quarter 2004 projection. (See item 1 of section III.A of this notice.)

B. Corrections to the Regulations Text of the FY 2006 Final Rule

On page 45055, we made a technical error in the regulations text of title 42, part 411. In this paragraph, we inadvertently excluded the updated statutory authority citation for this part. As revised by FR Doc. 05–1321 entitled ''Medicare Program; Medicare Prescription Drug Benefit'' (70 FR 4525, January 28, 2005), in this notice we are correcting the regulations text to include Secs. 1102, 1860D–1 through D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh). Accordingly, we are now republishing the corrected statutory authority citation for part 411, as revised by FR Doc. 05–1321. (See item 1 of section III. B. of this notice.)

Also on page 45055, in our revisions to two different sections of the regulations text in part 424 of the FY 2006 final rule, we inadvertently omitted a subpart heading. Specifically, revised § 424.3 and § 424.20 were both displayed as being included within subpart B of part 424 (''Certification and Plan of Treatment Requirements''). In fact, only § 424.20 is included within that subpart, while § 424.3 is included within subpart A (''General Provisions''). (See items 2 and 3 of section III. B. of this notice.)

C. Corrections of Errors to the Addendum of the FY 2006 Final Rule

Wage index data for two providers were erroneously omitted from the wage index calculation. This affected the wage index determination for the Houston-Sugar Land-Baytown, TX CBSA and the Nashville-Davidson-Murfreesboro, TN CBSA. Accordingly,

we are revising Table 8 and Table A to reflect the correct information. In addition, both Table 8 and Table A contained a number of technical and typographical errors. Therefore, we are including the corrected data in Table 8 and Table A. (See items 1 and 2 of section III.C. of this notice.)

III. Correction of Errors

In FR Doc. 05–15221 of August 4, 2005 (70 FR 45026), we are making the following corrections:

A. Corrections to Errors in the Preamble

1. On pages 45046 and 45047, in Table 11—Labor-Related Relative Importance, FY 2005 is corrected to read as follows:

TABLE 11.—LABOR-RELATED RELATIVE IMPORTANCE, FY2005 AND FY2006

	Relative importance,* labor-related, FY 2005 (97 index)	Relative importance,** labor-related, FY 2006 (97 index)
Wages and salaries	54.720	54.391
Employee benefits	11.595	11.648
Nonmedical professional fees	2.688	2.739
Labor-intensive services	4.125	4.128
Capital-related	3.094	3.016
Total	76.222	75.922

* Source: Global Insights, Inc., formerly DRI-WEFA, 2nd Quarter, 2004.
** Source: Global Insights, Inc., formerly DRI-WEFA, 2nd Quarter, 2005.

B. Corrections of Errors in the Regulations Text

PART 411—[CORRECTED]

■ 1. On page 45055, second column, lines 1 through 3, in part 411 (Exclusions From Medicare and Limitations On Medicare Payment), the authority citation is corrected to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

PART 424—[CORRECTED]

■ 2. On page 45055, second column, above § 424.3 Definitions, remove ''Subpart B—Certification and Plan of Treatment Requirements'' and add in its place, ''Subpart A—General Provisions.''

■ 3. On page 45055, second column, above amendatory instruction 3., add the subpart heading to read as follows: ''Subpart B Certification and Plan of Treatment Requirements.''

C. Corrections to the Addendum

1. On pages 45065, 45069, and 45070 in Table 8.—(''FY 2006 Wage Index For Urban Areas Based On CBSA Labor Market Areas'') the entries for the Urban area and Wage index are corrected to read as follows:

CBSA code	Urban area (constituent counties)	Wage index
26420	Houston-Baytown-Sugar Land, TX	0.9996
31900	Mansfield, OH	0.9891
34980	Nashville-Davidson Murfreesboro, TN	0.9790

2. On pages 45080 through 45121, the following entries identified in Table A.—(''FY 2006 SNF PPS Transition Wage Index'') are corrected to read as follows:

SSA State/ county code	County name	MSA No.	MSA Urban/ rural	2006 MSA-based WI	2006 CBSA-based WI	CBSA No.	CBSA Urban/ rural	Transition wage index*
01330	Geneva County, Alabama	01	Rural	0.7432	0.7721	20020	Urban	0.7577
04280	Hempstead County, Arkansas	04	Rural	0.7744	0.7466	99904	Rural	0.7605
11451	Fayette County, Georgia	0520	Urban	0.9793	0.9793	12060	Urban	0.9793
11840	Richmond County, Georgia	0600	Urban	0.9808	0.9748	12260	Urban	0.9778
16350	Fremont County, Iowa	16	Rural	0.8594	0.8509	99916	Rural	0.8552
27130	Fergus County, Montana	27	Rural	0.8762	0.8762	99927	Rural	0.8762
36710	Richland County, Ohio	4800	Urban	0.9891	0.9891	31900	Urban	0.9891
44070	Cannon County, Tennessee	44	Rural	0.7935	0.9790	34980	Urban	0.8863
44100	Cheatham County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
44180	Davidson County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
44210	Dickson County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
44400	Hickman County, Tennessee	44	Rural	0.7935	0.9790	34980	Urban	0.8863
44550	Macon County, Tennessee	44	Rural	0.7935	0.9790	34980	Urban	0.8863
44730	Robertson County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
44740	Rutherford County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
44790	Smith County, Tennessee	44	Rural	0.7935	0.9790	34980	Urban	0.8863
44820	Sumner County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799

SSA State/ county code	County name	MSA No.	MSA Urban/ rural	2006 MSA-based WI	2006 CBSA-based WI	CBSA No.	CBSA Urban/ rural	Transition wage index*
44840	Trousdale County, Tennessee	44	Rural	0.7935	0.9790	34980	Urban	0.8863
44930	Williamson County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
44940	Wilson County, Tennessee	5360	Urban	0.9808	0.9790	34980	Urban	0.9799
45070	Austin County, Texas	45	Rural	0.7931	0.9996	26420	Urban	0.8964
45180	Brazoria County, Texas	1145	Urban	0.8563	0.9996	26420	Urban	0.9280
45280	Chambers County, Texas	3360	Urban	1.0091	0.9996	26420	Urban	1.0044
45341	Coryell County, Texas	3810	Urban	0.8526	0.8526	28660	Urban	0.8526
45530	Fort Bend County, Texas	3360	Urban	1.0091	0.9996	26420	Urban	1.0044
45550	Galveston County, Texas	2920	Urban	0.9635	0.9996	26420	Urban	0.9816
45610	Harris County, Texas	3360	Urban	1.0091	0.9996	26420	Urban	1.0044
45757	Liberty County, Texas	3360	Urban	1.0091	0.9996	26420	Urban	1.0044
45801	Montgomery County, Texas	3360	Urban	1.0091	0.9996	26420	Urban	1.0044
45884	San Jacinto County, Texas	45	Rural	0.7931	0.9996	26420	Urban	0.8964
45950	Waller County, Texas	3360	Urban	1.0091	0.9996	26420	Urban	1.0044

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

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

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical and typographical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comments on, and subsequently finalized. The public has already had the opportunity to comment on the payment methodology and policies being used to calculate wage indexes. In addition, this correction notice is intended to ensure that the FY 2006 SNF PPS final rule accurately reflects the payment methodologies and policies adopted in the final rule. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical and typographical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2006 SNF PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

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

Dated: September 28, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–19762 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1290–CN]

RIN 0938–AN43

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the FY 2006 Inpatient Rehabilitation Facility (IRF) Prospective Payment System (PPS) regulation entitled ''Inpatient Rehabilitation Facility Prospective Payment System for FY 2006'' (70 FR 47880).

DATES: *Effective Date:* October 1, 2005. This rule applies for discharges on or after October 1, 2005 and on or before September 30, 2006 (FY 2006).

FOR FURTHER INFORMATION CONTACT: Pete Diaz, (410) 786–1235.

SUPPLEMENTARY INFORMATION:

I. Background

In the FY 2006 IRF PPS final rule (70 FR 47880), there were a number of technical errors that are identified and corrected in the ''Correction of Errors'' section below. The provisions in this correction notice are effective as if they had been included in the FY 2006 IRF PPS final rule (70 FR 47880). Accordingly, the corrections are effective for the payments for discharges occurring on or after October 1, 2005 and on or before September 30, 2006.

Most of the technical errors identified and corrected in the ''Correction of Errors'' section below originate from the same error, an inadvertent inclusion of incorrect data for four inpatient rehabilitation facilities (IRFs) in the analysis for the FY 2006 final rule (70 FR 47880). In the analysis for the FY 2006 final rule (70 FR 47880), we inadvertently and incorrectly neglected to apply any rural adjustment amount to estimated payments for four IRFs in our analysis sample that should have received a portion of the rural adjustment under the IRF hold harmless policy (as described below). When we reran the data analysis with the correct portion of the rural adjustment applied to payments for these four facilities, it resulted in the technical changes to the

majority of the numbers described in the ''Correction of Errors'' section below.

According to the hold harmless policy described in the FY 2006 final rule (70 FR 47880, 47924), those existing IRFs that meet the definition in 42 CFR 412.602 as rural in FY 2005 and will become urban under the FY 2006 Core-Based Statistical Area (CBSA)-based designations will qualify, under the hold harmless policy, for an adjustment to their payments in FY 2006 equal to all or some portion of two-thirds of the 19.14 percent rural adjustment effective in FY 2005 (as described below).

The hold harmless policy for the IRF PPS rural adjustment, as described in the FY 2006 final rule (70 FR 47880, 47924), results in two groups of IRFs that are within the scope of the policy. Both groups must meet the hold harmless criteria (that is, classified as rural in FY 2005 and redesignated as urban under the CBSA-based definitions in FY 2006). The first group of IRFs are those that meet the hold harmless criteria and that we estimate will experience lower payments in FY 2006 (with the hold harmless policy) than they otherwise would have if instead they had been paid under their rural designation in FY 2006, including the FY 2005 rural adjustment of 19.14 percent (as described in step 2 below). This first group of IRFs will receive an adjustment to payments in FY 2006 equal to a full two-thirds of the FY 2005 rural adjustment of 19.14 percent. The second group of IRFs meets the hold harmless criteria (described above), and we estimate that they will experience higher payments (with the hold harmless policy) than they otherwise would have if instead they had been paid under their rural designation in FY 2006, including the FY 2005 rural adjustment of 19.14 percent (as described in step 2 below). As discussed in the final rule (70 FR 47880, 47924), our intent of the hold harmless policy is to mitigate the negative payment effect upon an existing rural facility that is redesignated as an urban facility (effective FY 2006), but our intent is not for an IRF that comes under the hold harmless policy to realize greater payments as a result of the policy than the IRF would have if instead the IRF had been paid under its rural designation in FY 2006, including the FY 2005 rural adjustment of 19.14 percent. Therefore, under the hold harmless policy as described in the final rule (70 FR 47880, 47924), the second group of IRFs will receive a portion of the two-thirds of the 19.14 percent rural adjustment (as described further below), rather than the full adjustment.

The analysis for the FY 2006 final rule (70 FR 47880) and for this correction notice contained four IRFs in the second group (that is, facilities that would qualify for some portion less than the full two-thirds of the 19.14 percent rural adjustment in FY 2006).

In conducting the analysis for the FY 2006 final rule (70 FR 47880), we applied the hold harmless policy to IRF PPS payments using the following steps:

Step 1. We identified IRFs that qualify for the hold harmless policy (that is, those existing IRFs that are classified as rural in FY 2005 under § 412.602 and will be redesignated as urban under the CBSA-based definitions in FY 2006).

Step 2. For the IRFs that qualify for the hold harmless policy (identified in step 1), we estimated what they would have been paid under their rural designation in FY 2006, including the FY 2005 rural adjustment of 19.14 percent, based on what we estimate they would have been paid if we had issued an update notice to update FY 2006 IRF PPS payment rates instead of a final rule implementing substantive policy changes. An update notice for FY 2006 would have updated FY 2005 IRF PPS payment rates by the following: the FY 2006 MSA-based wage index, the FY 2006 estimate of the FY 1997-based excluded hospital market basket with capital, and the FY 2006 labor-related share estimated based on the FY 1997-based excluded hospital market basket with capital. Because an update notice would not have changed any IRF PPS policies, the 19.14 percent rural adjustment would have remained unchanged. Thus, to estimate what the IRFs that qualify for the hold harmless policy would have been paid under their rural designation in FY 2006 for the final rule and for this correction notice, we updated FY 2005 IRF PPS payments by the FY 2006 MSA-based wage index, the FY 2006 estimate of the FY 1997-based excluded hospital market basket with capital, and the FY 2006 labor related share estimated based on the FY 1997-based excluded hospital market basket with capital. We also kept the rural adjustment the same as it was in FY 2005, at 19.14 percent.

Step 3. We estimated what the IRFs that qualify for the hold harmless policy would have been paid in FY 2006 with the full two-thirds of the 19.14 percent hold harmless adjustment applied to their FY 2006 payment rates.

Step 4. We compared the estimated payment rates from step 2 and step 3 for each of the IRFs that qualify for the hold harmless policy.

Step 5. If an IRF's FY 2006 estimated payment rate from step 3 was less than the IRF's estimated payment rate from step 2, we applied the full two-thirds of the 19.14 percent adjustment to that IRF's estimated payment rate for FY 2006. However, if an IRF's FY 2006 estimated payment rate from step 3 was greater than that IRF's estimated payment rate from step 2, our methodology for the FY 2006 final rule (70 FR 47880), which is the same methodology we are using in this correction notice, requires that we apply only a portion of the two-thirds of the 19.14 percent adjustment to that IRF's estimated payment rate for FY 2006. The portion of the two-thirds of the 19.14 percent adjustment that we intended to apply in the final rule and in this correction notice to each of these facility's estimated payments was the amount that would make each IRF's estimated payment rate for FY 2006 equal to the estimated payment rate we computed in step 2 (that is, so that the IRF's estimated payment rate would equal, but not exceed, what we estimate the IRF would have been paid in FY 2006 if we had issued an update notice instead of a final rule implementing substantive policy changes for FY 2006 IRF PPS payments). However, in doing the analysis for the FY 2006 final rule, we inadvertently neglected to apply any portion of this adjustment to the estimated payments for these facilities.

Although our methodology in the FY 2006 final rule (70 FR 47880) included the steps discussed above, we inadvertently and incorrectly assigned no hold harmless adjustment in step 5 to estimated payments for the four IRFs that should have received a portion of the hold harmless adjustment when doing the data computations (as described above). In light of the inadvertent inclusion of incorrect data in the analysis for the final rule published in the FY 2006 IRF PPS regulation (70 FR 47880), we are making the following conforming technical changes to some of the numbers and the corresponding text in the FY 2006 final rule (70 FR 47880).

- The budget neutrality factor for the rural adjustment is reduced, from 0.9961 to 0.9957, because the conforming change from initially applying no rural adjustment to estimated payments for the four IRFs described above to applying a portion of the rural adjustment to estimated payments for these four providers increases estimated total payments to IRFs for FY 2006. Since we are implementing the hold harmless policy (described in the FY 2006 final rule (70 FR 47880)) in a budget neutral manner, we need to reduce the budget neutrality factor for the rural adjustment in order to make estimated total IRF payments in

FY 2006 the same with and without the hold harmless policy. Decreasing the budget neutrality factor for the rural adjustment also decreases the standard payment amount obtained after applying the budget neutrality factor, from $13,105 to $13,100. In addition, because we now apply the same budget neutrality factor for the low-income patient (LIP) adjustment (0.9851) to $13,100 instead of to $13,105, the resulting standard payment amount obtained after applying the budget neutrality factor for the LIP also decreases, from $12,910 to $12,905 (that is, now the calculation is $13,100 × 0.9851 = $12,905, whereas before the change to the budget neutrality factor for the rural adjustment the calculation was $13,105 × 0.9851 = $12,910).

- The combined budget neutrality factor (that is, the single budget neutrality factor we obtain from multiplying the budget neutrality factors for the wage index adjustment, the rural adjustment, the LIP adjustment, and the teaching status adjustment) decreases, from 0.9699 to 0.9695, because one of the four factors that make up the combined budget neutrality factor decreases (as discussed above).
- The standard payment conversion factor decreases by $5, from $12,767 to $12,762, because the budget neutrality factor for the rural adjustment that is applied to the standard payment amount to calculate the standard payment conversion factor decreases, as described above.
- The outlier threshold amount is reduced by $3, from $5,132 to $5,129, as a result of making the conforming changes to reduce the budget neutrality factor for the rural adjustment and, therefore, to reduce the standard payment conversion factor. This is because, when we lower the standard payment conversion factor by $5, we have to account for this change when we set the outlier threshold amount to ensure that estimated outlier payments will continue to equal 3 percent of estimated total payments in FY 2006.
- Table 11, the example of computing an IRF's Federal prospective payment rate, is revised because the reduction of the standard payment conversion factor, described above, changes all of the FY 2006 Federal prospective payment rates (in Table 12). A change in the rates necessitates a change in the example that is constructed using those payment rates. We have also made conforming changes to the numbers in the text that refer to Table 11.
- Table 12, which contains the final FY 2006 Federal prospective payment rates, is revised because we had to recalculate the prospective payment rates because we are correcting the standard payment conversion factor, described above in this correction notice. The Federal prospective payment rates are computed by multiplying the standard payment conversion factor by the relative weights for each case-mix group (CMG) and tier. Therefore, since the standard payment conversion factor changed, we had to multiply the corrected standard payment conversion factor by the relative weights for each CMG and tier.
- Table 13, which contains the projected impacts of the FY 2006 refinements to the IRF PPS, is revised because the distribution of payments among providers changes slightly due to the budget neutral implementation of the policies. That is, estimated payments to the four IRFs described above increase by an average of 11 percent as a result of applying a portion of the two-thirds of the 19.14 percent rural adjustment to these facilities' payments under the hold harmless policy. Therefore, to implement this policy in a budget neutral manner (that is, such that estimated total IRF payments in FY 2006 are the same with or without the hold harmless policy), estimated payments to those IRFs that do not qualify for the hold harmless policy must be lowered slightly so that estimated total payments to IRFs do not increase because of the policy. This produces a slight redistribution of estimated payments among IRFs that is reflected in the impact analysis (Table 13). Because some of the numbers in Table 13 change, we also make conforming changes to the text that describes Table 13.

In addition to the technical corrections (described above) that we are making because of the inadvertent inclusion of incorrect data for the hold harmless policy, we are also correcting some of the numbers in the FY 2006 final rule (70 FR 47880, 47948 through 47949) that were used to describe our rationale for the hold harmless policy. These numbers, which were intended to indicate the estimated dollar impacts of the hold harmless policy, were inadvertently computed using the incorrect standard payment conversion factor. That is, we inadvertently used the incorrect standard payment conversion factor to compare what estimated payments to the IRFs that would qualify for the hold harmless policy would have been with and without the hold harmless policy. In light of this error, we have corrected the standard payment conversion factor and are making conforming changes to the impact numbers used to describe our rationale for the hold harmless policy in the Correction of Errors section below.

We are also deleting a bullet point summarizing our final hold harmless policy because it was inadvertently added to the section of the FY 2006 final rule (70 FR 47880, 47883) that was summarizing the proposed rule, even though we did not propose this policy in the proposed rule. In light of this, we are making the conforming change to delete the bullet point from the section of the final rule in which we summarized the proposed rule.

We are also correcting some typographical errors and typesetting errors.

II. Correction of Errors

In FR Doc. 05–15419 (70 FR 47880), we make the following corrections as described above in Section I of this correction notice:

1. On page 47883, in the second column, second paragraph, 10th bullet, remove the bullet ''Implement a budget neutral 3 year hold harmless policy for FY 2005 rural IRFs redesignated as urban in FY 2006.'' This bullet point was inadvertently added to the section of the final rule that was summarizing the FY 2006 proposed rule (70 FR 30188). Since we did not propose this policy in the proposed rule, it is therefore incorrect to indicate that it was a proposed policy.

2. On page 47890, in the second column, in the third full paragraph, line 7, ''250.1'' is corrected to read ''250.01''. Commenters requested that we add code 250.01 (insulin dependent diabetes without mention of complications, not stated as uncontrolled). When we were adopting the commenter's request, we inadvertently typed the incorrect code number and corresponding description for this comorbidity code. Therefore, we are correcting typographical errors in the code and corresponding description. Furthermore, we note that code 250.1 is for diabetes with ketoacidosis, not diabetes mellitus without mention of complication not stated as uncontrolled. In addition, 250.1 (diabetes with ketoacidosis) makes no mention of controlled or uncontrolled status. This correction is merely a typographical error, and we are amending the error to reflect the description standard set forth within the ICD–9–CM manual.

3. On page 47890, as explained above, in the second column, in the third full paragraph, line 9, ''controlled'' is corrected to read ''uncontrolled''.

4. On page 47890, as explained above, in the second column, in the fourth full paragraph, line 12, ''250.1'' is corrected to read ''250.01''.

5. On page 47890, as explained above, in the second column, in the fourth full paragraph, line 14, ''controlled'' is corrected to read ''uncontrolled''.

6. On page 47890, as explained above, in the second column, in the fourth full paragraph, line 15, ''250.1'' is corrected to read ''250.01''.

7. On page 47890, as explained above, in the second column, in the fourth full paragraph, line 24, ''250.1'' is corrected to read ''250.01''.

8. On page 47891, as explained above, in the second column, in the paragraph labeled ''Final Decision'', line 12, ''250.1'' is corrected to read ''250.01''.

9. On page 47891, as explained above, in the second column, in the paragraph labeled ''Final Decision'', line 15, ''controlled'' is corrected to read ''uncontrolled''.

10. On page 47911, in the third column, in the paragraph labeled ''Miscellaneous Products'', line 11, ''1.322'' is corrected to read ''1.188''. This was a misprint and does not have any effect on the market basket cost structure or the FY 2006 update.

11. On page 47933, in the third column, third paragraph, line 12, immediately before the formula, the following should be inserted: ''where the DSH patient percentage ='. This was inadvertently deleted in the typesetting process.

12. On page 47936, in the second column, line 19, ''$5,132'' is corrected to read ''$5,129''.

13. On page 47936, in the third column, second full paragraph, line 6, ''$5,132'' is corrected to read ''$5,129''.

14. On page 47936, in the third column, second full paragraph, line 14, ''$5,132'' is corrected to read ''$5,129''.

15. On page 47937, in the second column, line 31, ''0.9961'' is corrected to read ''0.9957''.

16. On page 47937, in the second column, line 37, ''0.9961'' is corrected to read ''0.9957''.

17. On page 47937, in the second column, line 38, ''0.9699'' is corrected to read ''0.9695''.

18. On page 47937, in the second column, line 42, ''$12,767'' is corrected to read ''$12,762''.

19. On page 47938, in the first column, in ''Step 8'', line 3, ''0.9961'' is corrected to read ''0.9957''.

20. On page 47938, in the second column, in the seventh paragraph, line 16, ''0.9961'' is corrected to read ''0.9957''.

21. On page 47938, in the second column, in the last paragraph, line 9, ''$13,105'' is corrected to read ''$13,100''.

22. On page 47938, in the second column, in the last paragraph, line 12, ''$13,105'' is corrected to read ''$13,100''.

23. On page 47938, in the second column, in the last paragraph, line 13, ''$12,910'' is corrected to read ''$12,905''.

24. On page 47938, in the third column, line 1, ''$12,910'' is corrected to read ''$12,905''.

25. On page 47938, in the third column, line 1, ''$12,767'' is corrected to read ''$12,762''.

26. On page 47939, in the second column, line 21, ''0.9699'' is corrected to read ''0.9695''.

27. On page 47939, in the second column, line 23, ''$12,767'' is corrected to read ''$12,762''.

28. On pages 47939 through 47940, Table 11 is corrected with the following new Table 11.

TABLE 11.—EXAMPLES OF COMPUTING AN IRF'S FEDERAL PROSPECTIVE PAYMENT

	Facility A Dukes County, MA	Facility B Queens County, NY	Facility C Kings County, CA
Federal Prospective Payment	$27,675.67	$27,675.67	$27,675.67
Labor Share	× 0.75865	× 0.75865	× 0.75865
Labor Portion of Federal Payment	= $20,996.15	= $20,996.15	= $20,996.15
FY 2006 Transition Wage Index (shown in Tables 1 in the addendum)	× 1.0216	× 1.3449	× 0.9797
Wage-Adjusted Amount	= $21,449.66	= $28,237.72	= $20,569.93
Nonlabor Amount	$6,679.52	$6,679.52	$6,679.52
Wage-Adjusted Federal Payment	$28,129.19	$34,917.24	$27,249.45
Rural Adjustment	× 1.2130	× 1.0000	× 1.1276
Subtotal	= $34,120.70	= $34,917.24	= $30,726.48
LIP Adjustment	× 1.0310	× 1.0612	× 1.1203
FY 2006 Adjusted Rural and LIP Federal Prospective Payment Rate	= $35,178.45	= $37,054.18	= $34,422.87
Wage-Adjusted Federal Payment	$28,129.19	$34,917.24	$27,249.45
Teaching status adjustment	× 1.0000	× 1.0900	× 1.0000
Teaching Status addition to FY 2006 Adjusted Rural and LIP Federal Prospective Payment Rate	= $28,129.19 $0.00	= $38,059.79 $3,142.55	= $27,249.45 $0.00
Total FY 2006 Adjusted Federal Prospective Payment	$35,178.45	$40,196.73	$34,422.87

29. On page 47940, in the first column, line 2, ''$35,192.24'' is corrected to read ''$35,178.45'', as a result of correcting Table 11.

30. On page 47940, in the second column, line 1, ''$40,212.49'' is corrected to read ''$40,196.73'', as a result of correcting Table 11.

31. On page 47940, in the second column, line 2, ''$34,436.37'' is corrected to read ''$34,422.87'', as a result of correcting Table 11.

32. On pages 47940 through 47941, Table 12 is corrected with the following new Table 12.

TABLE 12.—FY 2006 PAYMENT RATE TABLE BASED ON ALL REFINEMENTS

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	$9,815.25	$9,314.98	$8,274.88	$8,103.87
0102	12,086.89	11,471.76	10,190.46	9,979.88
0103	14,244.94	13,520.06	12,010.32	11,762.74
0104	15,134.46	14,363.63	12,760.72	12,496.55
0105	18,164.15	17,240.19	15,315.68	14,999.18
0106	21,142.81	20,066.97	17,827.24	17,458.42
0107	24,402.22	23,160.48	20,574.90	20,151.20
0108	28,211.68	26,775.95	23,787.09	23,295.75
0109	28,045.77	26,618.98	23,646.71	23,159.20
0110	33,515.56	31,810.56	28,258.90	27,675.67
0201	10,388.27	8,711.34	7,684.00	7,207.98
0202	13,319.70	11,170.58	9,852.26	9,240.96
0203	15,935.91	13,364.37	11,786.98	11,057.00
0204	17,044.93	14,294.72	12,607.58	11,826.55
0205	20,905.43	17,532.44	15,462.44	14,504.01
0206	27,283.88	22,882.27	20,181.83	18,929.87
0207	35,295.86	29,600.18	26,107.22	24,487.73
0301	14,412.13	12,169.84	10,771.13	9,908.42
0302	18,797.15	15,873.38	14,048.41	12,922.80
0303	22,429.22	18,940.08	16,764.16	15,420.32
0304	30,910.84	26,102.12	23,103.05	21,250.01
0401	12,622.89	10,869.40	9,770.59	8,725.38
0402	17,407.37	14,990.25	13,474.12	12,032.01
0403	30,300.82	26,093.19	23,455.28	20,944.99
0404	54,324.01	46,780.39	42,050.79	37,550.91
0405	41,447.15	35,691.49	32,082.39	28,649.41
0501	9,833.12	8,230.21	7,199.04	6,456.30
0502	13,165.28	11,018.71	9,639.14	8,644.98
0503	17,453.31	14,607.39	12,778.59	11,459.00
0504	21,848.54	18,285.39	15,995.89	14,344.49
0505	25,892.82	21,671.15	18,957.95	17,000.26
0506	35,232.05	29,487.88	25,794.55	23,132.40
0601	11,441.13	9,355.82	8,890.01	8,286.37
0602	15,218.69	12,445.50	11,826.55	11,021.26
0603	19,482.47	15,932.08	15,139.56	14,109.67
0604	24,935.67	20,392.40	19,376.54	18,059.51
0701	11,555.99	9,872.68	9,271.59	8,403.78
0702	15,004.28	12,818.15	12,037.12	10,910.23
0703	18,678.46	15,957.60	14,985.14	13,582.60
0704	22,923.10	19,583.29	18,390.04	16,669.72
0801	8,373.15	7,033.14	6,520.11	5,865.42
0802	10,937.03	9,186.09	8,516.08	7,662.30
0803	16,216.67	13,619.61	12,626.72	11,359.46
0804	14,126.26	11,863.56	10,998.29	9,895.65
0805	17,786.40	14,937.92	13,849.32	12,459.54
0806	21,345.72	17,926.78	16,619.95	14,951.96
0901	10,735.39	9,773.14	8,684.54	7,772.06
0902	14,107.11	12,842.40	11,411.78	10,212.15
0903	18,610.82	16,942.83	15,055.33	13,472.84
0904	23,330.21	21,239.80	18,872.45	16,889.23
1001	12,300.02	11,342.87	10,121.54	9,331.57
1002	16,219.23	14,955.79	13,345.22	12,303.84
1003	22,813.35	21,035.60	18,771.63	17,306.55
1101	16,008.65	13,395.00	11,727.00	10,799.20
1102	23,967.04	20,052.93	17,555.41	16,166.90
1201	12,996.82	11,222.90	10,344.88	9,337.96
1202	16,821.59	14,526.98	13,389.89	12,085.61
1203	20,722.94	17,894.88	16,494.89	14,888.15
1301	13,193.36	12,273.22	10,624.37	9,390.28
1302	18,280.29	17,005.37	14,719.69	13,010.86
1303	23,364.67	21,736.24	18,815.02	16,631.44
1401	10,429.11	9,382.62	8,162.58	7,409.62
1402	14,081.59	12,667.56	11,021.26	10,004.13
1403	17,528.61	15,768.73	13,719.15	12,454.44
1404	22,230.13	19,999.33	17,398.43	15,794.25
1501	11,769.12	11,479.42	9,810.15	9,440.05
1502	14,879.22	14,511.67	12,402.11	11,935.02
1503	18,210.10	17,760.88	15,179.12	14,606.11
1504	24,007.87	23,415.72	20,012.09	19,256.58
1601	12,844.95	10,903.85	9,866.30	8,810.88
1602	17,624.32	14,962.17	13,536.65	12,089.44

TABLE 12.—FY 2006 PAYMENT RATE TABLE BASED ON ALL REFINEMENTS—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
1603	21,680.09	18,404.08	16,651.86	14,871.56
1701	12,892.17	12,294.91	10,621.81	9,343.06
1702	16,979.84	16,192.43	13,989.70	12,306.40
1703	20,204.80	19,268.07	16,645.48	14,643.12
1704	25,278.97	24,106.14	20,826.31	18,319.85
1801	15,464.99	12,547.60	10,522.27	9,293.29
1802	24,739.14	20,072.07	16,833.08	14,866.45
1803	44,391.34	36,016.92	30,205.10	26,676.41
1901	15,776.38	14,013.95	13,625.99	11,931.19
1902	29,559.34	26,256.54	25,529.10	22,352.64
1903	42,674.85	37,906.97	36,857.93	32,271.27
2001	11,157.82	9,427.29	8,452.27	7,717.18
2002	14,609.94	12,343.41	11,065.93	10,103.68
2003	18,873.72	15,946.12	14,295.99	13,051.70
2004	25,212.61	21,302.33	19,097.06	17,436.72
2101	27,895.18	27,895.18	20,304.34	18,839.26
5001	0.00	0.00	0.00	2,808.92
5101	0.00	0.00	0.00	8,105.15
5102	0.00	0.00	0.00	20,421.75
5103	0.00	0.00	0.00	9,193.74
5104	0.00	0.00	0.00	23,955.55

33. On page 47944, in the first column, in the last bullet, line 2, ''D5,132'' is corrected to read ''D5,129''.

34. On page 47944, in the second column, in the second bullet, line 8, ''0.9961'' is corrected to read ''0.9957''.

35. On page 47944, in the second column, in the fourth bullet, line 3, ''D12,767'' is corrected to read ''D12,762''.

36. On pages 47947, Table 13 is corrected with the following new Table 13.

TABLE 13.—PROJECTED IMPACT OF FY 2006 REFINEMENTS TO THE IRF PPS

Facility classification	Number of IRFs	Number of cases	FY06 wage index and labor-share (percent)	Outlier (percent)	Market basket (percent)	New CMG, new tiers, and motor score (percent)	Rural adjust. (percent)	New LIP adjust. (percent)	Teach. status adjust. (percent)	1.9 reduct.	Total percent change
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Total	1,188	461,738	0.0	1.8	3.6	0.0	0.0	0.0	0.0	−1.9	3.4
Urban unit	802	261,229	0.1	2.3	3.6	0.9	−0.2	0.1	0.5	−1.9	5.4
Rural unit	169	34,664	−1.3	3.1	3.6	1.7	1.2	−0.1	−0.9	−1.9	5.5
Urban hospital	196	158,968	0.2	0.5	3.6	−1.7	−0.1	−0.1	−0.5	−1.9	0.0
Rural hospital	21	6,877	−1.6	7.0	3.6	−0.7	1.3	0.0	−1.0	−1.9	6.5
Urban For-Profit	295	154,526	0.4	0.7	3.6	−1.8	0.0	0.0	−0.8	−1.9	0.0
Rural For-Profit	59	11,952	−1.9	3.8	3.6	0.2	1.3	0.2	−1.0	−1.9	4.2
Urban Non-Profit	603	237,384	0.0	2.1	3.6	1.0	−0.2	0.0	0.5	−1.9	5.0
Rural Non-Profit	105	23,793	−1.0	4.1	3.6	1.7	1.2	−0.3	−0.8	−1.9	6.7
Urban Government	100	28,287	−0.2	2.5	3.6	0.5	−0.1	0.5	1.7	−1.9	6.7
Rural Government	26	5,796	−1.5	2.6	3.6	1.4	1.2	0.3	−1.0	−1.9	4.8
Urban	998	420,197	0.1	1.6	3.6	−0.1	−0.1	0.0	0.1	−1.9	3.2
Rural	190	41,541	−1.4	3.8	3.6	1.2	1.3	−0.1	−0.9	−1.9	5.6
Urban by region:											
New England	35	20,612	−0.3	1.7	3.6	−0.7	−0.4	−0.3	−0.6	−1.9	1.1
Middle Atlantic	156	76,962	−0.4	2.0	3.6	1.1	−0.3	0.0	1.6	−1.9	5.7
South Atlantic	124	73,677	0.4	0.6	3.6	−0.5	0.2	0.0	−0.3	−1.9	2.0
East North Central	189	69,315	0.1	2.3	3.6	1.2	−0.3	−0.2	0.1	−1.9	4.9
East South Central	54	30,473	0.2	0.0	3.6	−1.4	0.4	0.1	−0.5	−1.9	0.5
West North Central	71	22,217	−0.1	2.1	3.6	0.6	−0.2	−0.1	0.1	−1.9	4.2
West South Central	184	76,088	0.5	1.8	3.6	−0.7	−0.2	−0.1	−0.5	−1.9	2.3
Mountain	69	24,287	−0.2	1.2	3.6	−2.2	−0.1	−0.1	−0.5	−1.9	−0.3
Pacific	116	26,566	0.8	2.2	3.6	−0.8	−0.3	1.1	0.0	−1.9	4.7
Rural by region:											
New England	4	924	0.4	2.1	3.6	1.7	1.2	−0.4	−0.9	−1.9	5.9
Middle Atlantic	19	5,377	−1.1	8.2	3.6	1.5	1.3	−0.4	−1.0	−1.9	10.3
South Atlantic	22	5,440	−1.0	2.5	3.6	1.2	1.3	0.1	−1.0	−1.9	4.7
East North Central	28	5,618	−1.0	3.0	3.6	1.9	1.2	−0.4	−0.9	−1.9	5.4
East South Central	20	5,362	−1.9	2.2	3.6	1.1	1.3	0.3	−0.7	−1.9	3.8
West North Central	30	5,351	−1.3	2.3	3.6	2.7	1.2	−0.2	−0.6	−1.9	5.8
West South Central	54	12,016	−1.7	4.3	3.6	0.3	1.3	0.1	−1.0	−1.9	4.9
Mountain	9	902	−3.2	9.4	3.6	2.6	1.1	−0.4	−0.9	−1.9	10.2
Pacific	4	551	0.9	2.8	3.6	−2.7	1.1	−0.8	−0.8	−1.9	2.0
Teaching Status:											
Non-teaching	1,053	400,072	0.0	1.6	3.6	−0.1	0.1	−0.1	−0.9	−1.9	2.2
Resident to ADC less than 10	71	39,888	0.3	2.5	3.6	0.3	−0.3	0.2	2.2	−1.9	7.0
Resident to ADC 10–19	42	17,793	−0.9	2.8	3.6	0.4	−0.3	1.1	9.1	−1.9	14.2
Resident to ADC greater than 19	22	3,985	−0.1	4.1	3.6	0.0	−0.3	1.1	19.5	−1.9	27.4

37. On page 47948, in the third column, second full paragraph, line 12, ''$207'' is corrected to read ''$1,322''.

38. On page 47948, in the third column, second full paragraph, line 13, ''$3,070'' is corrected to read ''$2,887''.

39. On page 47948, in the third column, second full paragraph, line 14, ''$1,472'' is corrected to read ''$1,986''.

40. On page 47948, in the third column, third full paragraph, line 5, ''5'' is corrected to read ''4''. This was a typographical error.

41. On page 47949, in the first column, in the first line of the column, ''$9'' is corrected to read ''$55''.

42. On page 47949, in the first column, in the second line of the column, ''$380'' is corrected to read ''$324''.

43. On page 47949, in the first column, line 8, ''$32'' is corrected to read ''$81''.

44. On page 47949, in the first column, in the eighth line of the column, ''$1,167'' is corrected to read ''$1,207''.

45. On page 47949, in the first column, in the ninth line of the column, ''$426'' is corrected to read ''$512''.

46. On page 47949, in the first column, in the first paragraph under section heading number 7, line 5, ''$5,132'' is corrected to read ''$5,129''.

47. On page 47949, in the third column, in the last sentence of the first full paragraph, ''1.4 percent estimated increase among all rural IRFs in the Middle Atlantic region'' is corrected to read ''1.3 percent estimated increase among all rural IRFs.'' When we reran the data analysis with the correct portion of the rural adjustment applied to payments for the four IRFs described above, some of the numbers in Table 13 changed slightly. These changes to some of the numbers in Table 13 were technical changes, primarily due to rounding. However, one of the technical changes in column 8 of Table 13 for rural IRFs in the Middle Atlantic region (from 1.4 percent to 1.3 percent) requires a conforming technical change to the text that explains Table 13. Previously, when rural IRFs in the Middle Atlantic region were projected to experience a 1.4 percent increase in payments for FY 2006 due to the rural adjustment policy for FY 2006, this group of IRFs was projected to receive the largest payment increase due to the rural adjustment policy for FY 2006. However, after we reran the numbers, rural IRFs in the Middle Atlantic region were projected to experience roughly the same estimated impact of the final rural policies as all other rural IRFs (1.3 percent). Thus, it is no longer accurate to describe rural IRFs in the Middle Atlantic region as having a larger projected increase in payments for FY 2006 than all other rural IRFs. At 1.3 percent, all rural IRFs (including rural IRFs in the Middle Atlantic region) now have the largest estimated increase in payments for FY 2006. Thus, we are making the conforming change to the text that describes Table 13.

48. On page 47949, in the third column, in the last sentence of the first full paragraph, ''0.3 percent estimated decrease among urban facilities in the New England, West South Central, and Pacific regions, and among all categories of teaching facilities'' is corrected to read ''0.4 percent estimated decrease among urban facilities in the New England region.'' When we reran the data analysis with the correct portion of the rural adjustment applied to payments for the four IRFs described above, some of the numbers in Table 13 changed slightly. These changes to some of the numbers in Table 13 were technical changes, primarily due to rounding. However, one of the technical changes in column 8 of Table 13 for urban IRFs in the New England region (from -0.3 percent to -0.4 percent) requires a conforming technical change to the text that describes Table 13. The change from -0.3 percent to -0.4 percent means that urban IRFs in the New England region are now projected to experience a slightly greater decrease in payments than the other categories of urban IRFs listed previously whose estimated impacts in column 8 remained at -0.3 percent (that is, urban IRFs in the West South Central and Pacific regions and all categories of teaching IRFs). Thus, it is no longer accurate to describe urban IRFs in the West South Central and Pacific regions and all categories of teaching IRFs as experiencing the largest estimated decreases in payments due to the rural adjustment. At -0.4 percent, urban IRFs in the New England region now have a slightly larger estimated decrease in payments for FY 2006 than the other groups listed. Thus, we are making the conforming change to the text that describes Table 13.

49. On page 47952, in the first column, in the first paragraph under section heading number 14, line 9, ''5.7'' is corrected to read ''5.6''.

50. On page 47952, in the first column, in the first paragraph under section heading number 14, line 11, ''5.3'' is corrected to read ''5.4''.

51. On page 47952, in the first column, in the second paragraph under section heading number 14, line 5, ''14.3'' is corrected to read ''14.2''.

52. On page 47952, in the second column, in the ninth line of the column, ''0.2'' is corrected to read ''0.3''.

53. On page 47954, in the column titled ''2006 CBSA-based WI'' of SSA Code 01090, ''.7628'' is corrected to read ''0.7628''. This was a typesetting error.

54. On page 47954, in the column titled ''MSA No.'' of SSA Code 01390, ''21030'' is corrected to read ''2030''. This was a typesetting error.

55. On page 47960, in the column titled ''CBSA No.'' of SSA Code 11110, ''5260'' is corrected to read ''15260''. This was a typesetting error.

56. On page 47961, in the column titled ''CBSA No.'' of SSA Code 11703, ''5260'' is corrected to read ''15260''. This was a typesetting error.

57. On page 47964, in the column titled ''MSA No.'' of SSA Code 15140, ''11640'' is corrected to read ''1640''. This was a typesetting error.

58. On page 47964, in the column titled ''CBSA No.'' of SSA Code 15310, ''0126900'' is corrected to read ''26900''. This was a typesetting error.

59. On page 47968, in the column titled ''MSA No.'' of SSA Code 18090, ''13400'' is corrected to read ''3400''. This was a typesetting error.

60. On page 47972, in the column titled ''CBSA No.'' of SSA Code 23380, ''2820'' is corrected to read ''28020''. This was a typesetting error.

61. On page 47982, in the column titled ''MSA No.'' of SSA Code 34400, ''13120'' is corrected to read ''3120''. This was a typesetting error.

62. On page 47992, in the column titled ''CBSA No.'' of SSA Code 44740, ''4980'' is corrected to read ''34980''. This was a typesetting error.

63. On page 47992, in the column titled ''CBSA No.'' of SSA Code 45221, ''7780'' is corrected to read ''17780''. This was a typesetting error.

64. On page 48000, in the column titled ''CBSA No.'' of SSA Code 52460, ''133460'' is corrected to read ''33460''. This was a typesetting error.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that

notice and comment process is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and the reasons for it into the notice issued.

The policies and payment methodology expressed in the FY 2006 final rule (70 FR 47880) have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the FY 2006 final rule that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodology that were expressed in the final rule. For example, this notice corrects typographical errors and typesetting errors, revises inaccurate tabular data due to inadvertently neglecting to apply any rural adjustment amount to estimated payments for four IRFs in conformance with the hold harmless policy, updates the narrative to reflect the correct tabular data, corrects some estimated dollar impacts due to inadvertently computing the estimates using the incorrect standard payment conversion factor, and makes clarifications to the preamble text. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. We also believe it is in the public interest to waive notice and comment procedures and the 30-day delay in effective date for this notice. This correction notice is intended to ensure that the FY 2006 final rule accurately reflects the policies expressed in the final rule, and that the correct information is made available to the public prior to October 1, 2005, the date on which the final rule becomes effective.

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

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

Dated: September 27, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–19610 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1286–CN]

RIN 0938–AN89

Medicare Program; Hospice Wage Index for Fiscal Year 2006

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

ACTION: Final rule, correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 4, 2005, entitled ''Hospice Wage Index for Fiscal Year 2006.'' This document is effective on October 1, 2005, the effective date of the provisions of the final rule.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

Federal Register Doc. 05–15290 of August 4, 2005 (70 FR 45130), entitled ''Hospice Wage Index for Fiscal Year 2006,'' includes errors that are identified and corrected in the ''Correction of Errors'' section below. The errors in this correcting notice are effective as if they had been included in the document published on August 4, 2005. Accordingly, the corrections are effective on October 1, 2005, the effective date of the provisions of the August 4, 2005 final rule.

II. Summary of the Corrections to the August 4, 2005 Final Rule

In the August 4, 2005 final rule, on pages 45146 through 45167, we published an Addendum. In Table A of the addendum, we published the updated urban and rural wage index values for hospices utilizing the Core-Based Statistical Areas (CBSA) designations. To ensure that hospice providers were able to identify their current wage index, Table A contains the CBSA code, CBSA wage index, CBSA county name, and the current MSA designation. There are typographical errors in the wage indexes listed in the table that were as a result of formatting the columns. In addition, in several sections throughout the table (that is, for the CBSA county names located in the urban areas of Gainesville, FL; Newark Union, NJ–PA; Waterloo-Cedar Falls, LA; and Wilmington, DE–MD–NJ), we inadvertently omitted the asterisk that corresponds to the footnotes that appear at the end of the table.

This correction notice is consistent with the published hospice wage index values that will be used to make payment as of October 1, 2005. In section III of this notice, we provide a description of the errors and the changes being made to correct the errors. Thus, for clarity, we will republish only the section of the table that contains errors.

III. Correction of Errors

■ In **Federal Register** Doc. 05–15290 of August 4, 2005 (70 FR 45130), we are making the following corrections to Table A—Hospice Wage Index for Urban Areas by CBSA:

§ 418.304 [Corrected]

■ 1. On page 45146, in the third column, in lines 15 and 16, for CBSA code 10420, indent the CBSA county name for ''Portage, OH'' and ''Summit, OH'' to follow the format of the table.

The CBSA code for 10420 should read as follows:

CBSA code	Wage Index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
10420	0.9604	Akron, OH ..... Portage, OH Summit, OH	0080

■ 2. On page 45150, in the third column, in lines 25 through 27, for CBSA code 17420, move the CBSA county name for ''Cleveland, TN'' to line-up with the column and indent the CBSA county

names for ''Bradley, TN'' and ''Polk, TN'' to follow the format of the table.

The CBSA code for 17420 should read as follows:

CBSA Code	Wage Index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
17420	0.8337	Cleveland, TN Bradley, TN Polk, TN	44

■ 3. On page 45151—

■ A. In the second column, in the 12th entry, for CBSA code 19340, move the wage index value ''0.9076'' from the CBSA county name Rock Island, IL* to ''Mercer, IL*.''

■ B. In the second column, in the 15th entry for CBSA code 19380, move the wage index value ''0.9579'' from the CBSA county name Miami, OH* to ''Prebele, OH*.''

■ C. In the third column, in the 14th line from the bottom, for CBSA code 19780, remove the figure from in front of the word ''Madison.'' In addition, indent the CBSA county name for ''Madison, IA*,'' to follow the format of the table.

The table for CBSA codes 19340, 19380, and 19780 should read as follows:

CBSA code	Wage index [1]	Urban area (constituents counties or country equivalents) [2]	MSA code
19340	.....	Davenport-Moline-Rock Island, IA-IL.	
	0.9305	Henry, IL*	1960
		Rock Island, IL*	1960
		Scott, IA*	1960
	0.9076	Mercer, IL*	14

* * * * *

CBSA code	Wage index [1]	Urban area (constitutent counties or county equivalents) [2]	MSA code
19380	.....	Dayton, OH.	
	0.9829	Greene, OH*	2000
		Miami, OH*	2000
		Montgomery, OH*	2000
	0.9579	Preble, OH*	36

* * * * *

CBSA code	Wage index [1]	Urban area (constitutent counties or county equivalents) [2]	MSA code
19780	.....	Des Moines, IA*.	
	0.9828	Dallas, IA*	2120
		Polk, IA*	2120
		Warren, IA*	2120
	0.9449	Guthrie, IA*	16
		Madison, IA*	16

■ 4. On page 45152, in the third column—

■ A. In line 14, for the CBSA code 20764, format the CBSA county name for ''Ocean, NJ*'' to line-up with the CBSA county name ''Monmouth, NJ*.''

■ B. In the 10th line from the bottom, for CBSA code 22500, remove the asterisk from the CBSA county name for ''Florence, SC.''

■ C. In the 8th and 9th lines from the bottom, for CBSA code 22500, add an asterisk to the CBSA county name for ''Florence, SC'' and indent the CBSA county names for ''Darlington, SC* and Florence, SC'' to follow the format of the table.

The table for CBSA code 20764 and 22500 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
20764	.....	Edison, NJ.	
	1.1930	Middlesex, NJ*	5015
		Somerset, NJ*	5015
	1.1680	Monmouth, NJ*	5190
		Ocean, NJ*	5190

* * * * *

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
22500	.....	Florence, SC.	
	0.9267	Darlington, SC*	42
	0.9436	Florence, SC*	2655

■ 5. On page 45153, in the third column, for CBSA code 23540, add an asterisk to the CBSA county name for ''Alachua, FL'' and ''Gilchrist, FL.''

The table for CBSA code 23540 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
23540	.....	Gainesville, FL.	
	0.9642	Alachua, FL*	2900
	1.0033	Gilchrist, FL*	10

■ 6. On page 45154, in the third column, in the 16th line from the bottom, for CBSA code 26580, indent the CBSA county name for ''Boyd, KY'' to follow the format of the table.

The table for CBSA code 26580 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
26580	1.0144	Huntington-Ashland, WV-KY-OH	3400
		Boyd, KY.	
		Cabell, WV.	
		Greenup, KY.	
		Lawrence, OH.	
		Wayne, WV.	

■ 7. On page 45159, in the third column, in lines 19 through 24, for CBSA code 35084, add an asterisk to the CBSA county name for ''Pike, PA'', ''Essex, NJ,'' ''Morris, NJ,'' ''Sussex, NJ,'' ''Union, NJ,'' and ''Hunterdon, NJ.''

The table for CBSA code 35084 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
35084	.....	Newark-Union, NJ-PA.	
	1.2122	Pike, PA*	5660
	1.2363	Essex, NJ*	5640
		Morris, NJ*	5640
		Sussex, NJ*	5640
		Union, NJ*	5640
	1.2223	Hunterdon, NJ*	5015

■ 8. On page 45160—

■ A. In the first column, in the first entry from the bottom, for CBSA code 1.0183, remove the CBSA code ''1.0183'' and add in its place the CBSA code ''38540.''

■ B. In the second column, in the first entry from the bottom, in the wage index column, add the wage index value ''1.0183'' to the CBSA county name ''Power, ID*.''

The table for CBSA code 38540 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
38540	.....	Pocatello, ID..	
	0.9773	Bannock, ID*	6340
	1.0183	Power, ID*	13

■ 9. On page 45166, in the third column, in the 6th through 9th lines from the bottom, for CBSA code 47940, add an asterisk to the CBSA county names for ''Black Hawk, IA,'' ''Bremer, IA'', and ''Grundy, IA.''

The table for CBSA code 47940 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
47940	.....	Waterloo-Cedar Falls, IA.	
	0.9157	Black Hawk, IA *	8920
	0.9113	Bremer, IA *	16
		Grundy, IA *	16

■ 10. On page 45167, in the third column, in lines 22 through 24, for CBSA code 48864, add an asterisk to the CBSA county names for ''Cecil, MD'', New Castle, DE,'' and ''Salem, NJ.''

The table for CBSA code 48864 should read as follows:

CBSA code	Wage index [1]	Urban area (constituent counties or county equivalents) [2]	MSA code
48864	.....	Wilmington, DE-MD-NJ.	
	1.1757	Cecil, MD *	9160
		New Castle, DE *	9160
	1.1600	Salem, NJ *	6160

IV. Waiver of Proposed Rulemaking

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

The revisions contained in this rule, correct formatting and typographical errors in various sections of a table. These corrections are necessary to ensure that the final rule accurately reflects the correct wage index value used to calculate payment to hospices. Since they are not substantive and merely technical, we find that public comments on these revisions are both unnecessary and impracticable. Therefore, we find good cause to waive notice and comment procedures.

In addition, the Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a final rule. Since this notice simply makes technical modifications to a final rule that has previously gone through notice-and-comment rulemaking and the corrections are only to formatting errors, we believe good cause also exists under the APA to waive the 30-day delay in the effective date. Thus, this notice is effective October 1, 2005.

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

Dated: September 27, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–19609 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024–AC84

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Department of the Interior.

ACTION: Final rule; Technical amendment.

SUMMARY: The Native American Graves Protection and Repatriation Act of 1990 (the Act) assigns responsibility for implementation to the Secretary of the Interior. Secretarial Order 3261 assigns some of these responsibilities to other positions in the Department of the Interior and National Park Service. This technical amendment amends the rule to be consistent with the new assignment of responsibilities.

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW., (2253), Washington, DC 20240, telephone (202) 354–1479, facsimile (202) 371–5197, e-mail: *Sherry_Hutt@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President George H.W. Bush signed the Native American Graves Protection and Repatriation Act of 1990 (the Act) into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. The Act assigns implementation responsibilities to the Secretary of the Interior.

Technical Amendment

Secretarial Order 3261 reassigns some of these implementation responsibilities to other positions in the Department of the Interior and National Park Service to ensure efficient and effective implementation of the statutory requirements.

Pursuant to the Secretarial Order, the Assistant Secretary for Fish and Wildlife and Parks is responsible for issuing regulations to carry out the Act after consultation with the Assistant Secretary for Indian Affairs; granting extensions of inventory deadlines; awarding grants to assist in implementation of NAGPRA to Indian tribes, Native Hawaiian organizations, and museums. In consultation with the Office of the Solicitor, the Assistant Secretary for Fish and Wildlife and Parks is also responsible for executing provisions of the Act regarding civil penalties against museums that fail to comply with NAGPRA, including investigating allegations of failure to comply with NAGPRA requirements and developing and assessing civil penalties.

The Manager, National NAGPRA Program, reporting to the National Park Service Director through the Associate Director for Cultural Resources, is responsible for managing the operations of the National NAGPRA Program and provides staff support to the Assistant Secretary for Fish and Wildlife and

Parks. Such duties include preparing regulations for issuance by the Assistant Secretary for Fish and Wildlife and Parks; reviewing and recommending disposition of requests for extensions of the inventory deadline; publishing notices in the **Federal Register;** serving as the Designated Federal Official for the Native American Graves Protection and Repatriation Review Committee; in consultation with the Office of the Solicitor, providing technical assistance to the Department of Justice in implementation of the trafficking provisions of NAGPRA; developing and issuing guidelines, technical information, training and other programs; and administering grants to assist Indian tribes, Native Hawaiian organizations and museums in meeting their NAGPRA obligations. The National NAGPRA Program Manager is also responsible for providing staff to support the civil penalty responsibilities of the Assistant Secretary for Fish and Wildlife and Parks, who will report directly to the Assistant Secretary in the performance of these duties.

Some of the abovementioned responsibilities were previously assigned by regulation to the National Park Service Director or the Departmental Consulting Archeologist. This technical amendment revises the rule to be consistent with the realignment of implementation responsibilities in the Secretarial Order.

Good Cause for Immediate Adoption

The Department of the Interior is issuing this technical amendment without prior notice and opportunity for comment as allowed by the Administrative Procedure Act (APA) (5 U.S.C. 553(B)). This provision allows an agency to issue a regulatory action without notice and opportunity for comment when the agency for good cause finds that notice and comment procedures are ''impracticable, unnecessary or contrary to the public interest.'' This technical amendment will clarify the delegation implementation responsibilities. Immediate implementation of the provisions of this amendment will benefit the public by ensuring efficient administration of the provisions of the Act. Failure to implement this amendment immediately could result in confusion and inefficiency that would adversely affect the public interest. For this reason, the Department of the Interior has determined that prior notice and an opportunity for comment would be impracticable, unnecessary, and contrary to the public interest. This same rationale provides good cause to make the technical amendment effective immediately upon publication, as allowed by the Administrative Procedure Act (553 U.S.C. (d)(3)).

Compliance With Laws and Executive Orders

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency-specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

List of Subjects in 43 CFR Part 10

Administrative practices and procedure, Hawaiian Natives, Historic Preservation, Indians—Claims,

Museums, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Department of the Interior amends title 43, Code of Federal Regulations, as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

■ 1. The authority citation for Part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

■ 2. Amend § 10.2 by revising the second sentence of paragraph (b)(2) and revising paragraph (c)(3) to read as follows:

§ 10.2 Definitions.

(b) * * *

(2) * * * The Secretary will make available a list of Indian tribes and Indian tribal officials for the purposes of carrying out this statute through the Manager, National NAGPRA Program.

* * * * *

(c) * * *

(3) *Manager, National NAGPRA Program* means the official of the Department of the Interior designated by the Secretary as responsible for administration of matters relating to this part. Communications to the Manager, National NAGPRA Program, should be addressed to: Manager, National NAGPRA Program, National Park Service (MS 2253 MIB), 1849 C Street NW., Washington, DC 20240.

■ 3. Revise paragraph (a) of § 10.12 to read as follows:

§ 10.12 Civil penalties.

(a) *The Secretary's authority to assess civil penalties.* The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum that fails to comply with the requirements of the Act. The Assistant Secretary for Fish and Wildlife and Parks may act on behalf of the Secretary.

* * * * *

Subpart D to Part 10—[Nomenclature Change]

■ 4. In Subpart D, remove the words ''Departmental Consulting Archeologist'' wherever they appear and add in their place the words ''Manager, National NAGPRA Program''.

Dated: September 14, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–19547 Filed 9–29–05; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7895]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification letter addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New Jersey:				
East Rutherford, Borough of, Bergen County.	340028	June 24, 1975, Emerg; December 16, 1980, Reg; September 30, 2005, Susp.	09/30/2005	09/30/2005
Edgewater, Borough of, Bergen County.	340029	September 25, 1975, Emerg; April 1, 1983, Reg; September 30, 2005, Susp.	.....do	Do.
Fair Lawn, Borough of, Bergen County	340033	April 4, 1974, Emerg; July 2, 1981, Reg; September 30, 2005, Susp.	.....do	Do.
Fairview, Borough of, Bergen County ...	340034	July 16, 1975, Emerg; August 2, 1982, Reg; September 30, 2005, Susp.	.....do	Do.
Glen Rock, Borough of, Bergen County.	340038	February 12, 1975, Emerg; July 2, 1981, Reg; September 30, 2005, Susp..	.....do	Do.
Hackensack, City of, Bergen County	340039	October 2, 1974, Emerg; December 1, 1982, Reg; September 30, 2005, Susp.	.....do	Do.
Harrington Park, Borough of, Bergen County.	340040	April 16, 1975, Emerg; April 15, 1981, Reg; September 30, 2005, Susp.	.....do	Do.
Hasbrouck Heights, Borough of, Bergen County.	340041	July 8, 1975, Emerg; June 30, 1976, Reg; September 30, 2005, Susp.	.....do	Do.
Hillsdale, Borough of, Bergen County ...	340043	November 19, 1971, Emerg; December 15, 1981, Reg; September 30, 2005, Susp..	.....do	Do.
Mahwah, Township of, Bergen County.	340049	October 13, 1972, Emerg; November 3, 1982, Reg; September 30, 2005, Susp.	.....do	Do.
Montvale, Borough of, Bergen County.	340052	May 2, 1975, Emerg; June 15, 1981, Reg; September 30, 2005, Susp.	.....do	Do.
North Arlington, Borough of, Bergen County.	340055	July 3, 1975, Emerg; April 3, 1978, Reg; September 30, 2005, Susp.	.....do	Do.
Oakland, Borough of, Bergen County ...	345309	June 30, 1970, Emerg; June 30, 1970, Reg; September 30, 2005, Susp..	.....do	Do.
Old Tappan, Borough of, Bergen County.	340059	October 6, 1972, Emerg; April 15, 1977, Reg; September 30, 2005, Susp.	.....do	Do.
Oradell, Borough of, Bergen County	340060	November 24, 1972, Emerg; March 15, 1977, Reg; September 30, 2005, Susp.	.....do	Do.
Palisades Park, Borough of, Bergen County.	340061	May 22, 1975, Emerg; June 1, 1982, Reg; September 30, 2005, Susp..	.....do	Do.
Park Ridge, Borough of, Bergen County	340063	February 19, 1975, Emerg; May 5, 1981, Reg; September 30, 2005, Susp.	.....do	Do.
Ramsey, Borough of, Bergen County ...	340064	January 21, 1974, Emerg; September 2, 1981, Reg; September 30, 2005, Susp.	.....do	Do.
Ridgefield Park, Village of, Bergen County.	340066	May 8, 1975, Emerg; October 15, 1982, Reg; September 30, 2005, Susp.	.....do	Do.
Rochelle Park, Township of, Bergen County.	340070	February 16, 1973, Emerg; March 28, 1980, Reg; September 30, 2005, Susp.	.....do	Do.
Saddle Brook, Township of, Bergen County.	340074	June 10, 1974, Emerg; April 15, 1982, Reg; September 30, 2005, Susp.	.....do	Do.
Woodcliff Lake, Borough of, Bergen County.	340082	July 15, 1975, Emerg; September 2, 1981, Reg; September 30, 2005, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Wisconsin: Manitowoc, City of, Manitowoc County.	550240	May 21, 1971, Emerg; April 15, 1977, Reg; September 30, 2005, Susp.	.....do	Do.
Region VII				
Nebraska: Brule, Village of, Keith County.	310128	July 10, 1975, Emerg; September 27, 1985, Reg; September 30, 2005, Susp.	.....do	Do.
Campbell, Village of, Franklin County. ..	310256	January 6, 1998, Emerg; March 1, 2001, Reg; September 30, 2005, Susp.	.....do	Do.
Region VIII				
Colorado: Castle Rock, Town of, Douglas County.	080050	April 22, 1975, Emerg; August 15, 1978, Reg; September 30, 2005, Susp.	.....do	Do.
Larkspur, Town of, Douglas County	080309	March 27, 1987, Emerg; September 30, 1987, Reg; September 30, 2005, Susp.	.....do	Do.
Region IX				
Arizona: Fountain Hills, Town of, Maricopa County.	040135	February 10, 1994, Emerg; February 10, 1994, Reg; September 30, 2005, Susp.	.....do	Do.
Paradise Valley, Town of, Maricopa County.	040049	September 15, 1972, Emerg; May 1, 1980, Reg; September 30, 2005, Susp.	.....do	Do.
California: Fresno, City of, Santa Barbara County.	060048	October 30, 1975, Emerg; December 1, 1982, Reg; September 30, 2005, Susp.	.....do	Do.
Guadalupe, City of, Santa Barbara County.	060333	August 21, 1975, Emerg; April 30, 1982, Reg; September 30, 2005, Susp..	.....do	Do.

*.....do....=Ditto.
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: September 21, 2005.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 05–19637 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 3, 10, 114, 147, 151, and 175

[USCG–2005–22329]

RIN 1625–ZA05

Shipping; Technical, Organizational and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes throughout Title 46 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard shipping and transportation regulations. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective September 30, 2005.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying under docket number [USCG–2005–22329] at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Ray Davis, Project Manager, Standards Evaluation and Development Division (G–MSR–1), U.S. Coast Guard, at 202–267–6826. If you have questions on viewing, or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, Department of Transportation, at 202–493–0402.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements because some of these changes involve agency organization and practices, and all of these changes are non-substantive. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

Each year Title 46 of the Code of Federal Regulations is updated on October 1. This rule, which becomes effective on September 30, 2005, makes technical and editorial corrections throughout Title 46. This rule does not change any substantive requirements of the existing regulations.

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. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

Small Entities

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

This rule will have no substantive effect on the regulated public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 3

Oceanographic research vessels, Reporting and recordkeeping requirements, Research.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 147

Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 3, 10, 114, 147, 151 and 175 as follows:

PART 3—DESIGNATION OF OCEANOGRAPHIC RESEARCH VESSELS

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

Authority: 46 U.S.C. 2113, 3306; Department of Homeland Security Delegation No. 0170.1.

§ 3.03–1 [Amended]

■ 2. In § 3.03–1, remove the words ''in this subchapter'' and add, in their place, the words ''in this part''.

PART 10—LICENSING OF MARITIME PERSONNEL

■ 3. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Department of Homeland Security Delegation 0170.1. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

§ 10.201 [Amended]

■ 4. In § 10.201(c), remove the text ''§ 10.464(i)'' and add, in its place, the text ''10.467(h)''.

§ 10.467 [Amended]

■ 5. In § 10.467(b), after the words ''under paragraph'', remove the text ''(f)'' and add, in its place, the text ''(g)''.

PART 114—GENERAL PROVISIONS

■ 6. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; Sec. 114.900 also issued under 44 U.S.C. 3507.

§ 114.400 [Amended]

■ 7. In § 114.400(b) in the definition for ''High speed craft'', after the text ''V=3.7xdispl $^{.1667}$'', remove the text ''h''.

PART 147—HAZARDOUS SHIPS' STORES

■ 8 . The authority citation for part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 147.30 [Amended]

■ 9. In § 147.30(b), after the words ''Federal Hazardous Substances Act Regulations in'', remove the text ''26 CFR'' and add, in its place, the text ''16 CFR''.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

■ 10. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

§ 151.15–10 [Amended]

■ 11. In § 151.15–10(b), remove the text ''151.03–43'' and add, in its place, ''151.03–49''

PART 175—GENERAL PROVISIONS

■ 12. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

§ 175.400 [Amended]

■ 13. In § 175.400 in the definition for ''High speed craft'', after the text ''V=3.7xdispl $^{.1667}$'', remove the text ''h''.

Dated: September 15, 2005.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 05–19723 Filed 9–28–05; 1:31 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 04–295]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Second Order on Reconsideration of the Fifth Report and Order* the Commission grants two petitions for reconsideration filed in response to the Commission's *Part 1 Order on Reconsideration of the Fifth Report and Order,* 68 FR 42984 (July 21, 2003) (*Part 1 Reconsideration Order*). The Commission revises one element of the exemption from part 1 attribution rules for certain rural telephone cooperatives that participate in the Commission's spectrum auction program. The revised rule permits a rural telephone cooperative applicant or its controlling interest to demonstrate that either it is eligible for tax-exempt status under the Internal Revenue Code or it adheres to the cooperative principles enumerated in a previous decision of the United States Tax Court.

DATES: Effective December 9, 2005.

FOR FURTHER INFORMATION CONTACT: William Huber, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Order on Reconsideration of the Fifth Report and Order* adopted December 22, 2004 and released on January 31, 2005. The complete text of the *Second Order on Reconsideration of the Fifth Report and Order,* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. *The Second Order on Reconsideration of the Fifth Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please make sure you provide the appropriate FCC document number (for example, FCC 04–295 for the *Second Order on Reconsideration of the Fifth Report and Order*) and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/.*

I. Overview

1. In the *Second Order on Reconsideration of the Part 1 Fifth Report and Order,* the Commission grants two petitions for reconsideration of the Commission's *Part 1 Reconsideration Order.* The petitioners seek to modify one of the elements of the three-part test that rural telephone cooperatives must satisfy to receive a limited exemption from the attribution rules that are part of the Commission's part 1 competitive bidding rules. In particular, petitioners seek to refine a portion of the rule that defines the category of eligible rural telephone cooperatives so as not to limit the flexibility of rural telephone cooperatives to provide new telecommunications and other advanced communications services to consumers in rural areas. In this decision, the Commission revises the third element of the exemption to permit a rural telephone cooperative applicant (or its controlling interest) to demonstrate that either it is eligible for tax-exempt status pursuant to section 501(c)(12) of the Internal Revenue Code or it adheres to the cooperative principles enumerated in *Puget Sound Plywood, Inc.* v. *Commissioner of Internal Revenue (Puget Sound),* 44 T.C. 305 (1965). The Commission also clarifies how the first element of this rule applies in cases where a rural telephone cooperative applicant is organized in a jurisdiction

that lacks a specific statute governing organization as a cooperative.

II. Background

A. Section 1.2110 Controlling Interest Standard

2. In the *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000), the Commission adopted as part of its attribution rule for competitive bidding a controlling interest standard, § 1.2110(c)(2), to be used to determine which applicants are eligible for small business status. Applicants that qualify as small businesses may apply for bidding credits if they are available in a particular service. Through the attribution rule, including the controlling interest standard, the Commission ensures that only those entities truly meriting small business status qualify for the small business provisions.

3. Section 1.2110(c) also provides specific guidance on attribution of interests and gross revenues in certain circumstances. For example, § 1.2110(c)(2)(ii)(F) provides that the officers and directors of any applicant will be considered to have a controlling interest in the applicant. Because the gross revenues of all affiliates of the applicant and affiliates of the applicant's controlling interests are attributed to the applicant in calculating an applicant's gross revenues, the gross revenues of other entities controlled by such officers and directors must be included.

B. Exemption From Part 1 Attribution for Officers and Directors of Rural Telephone Cooperatives

4. Following the adoption of the *Part 1 Fifth Report and Order,* certain rural telephone cooperative interests petitioned for reconsideration, seeking an exemption for rural telephone cooperatives from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant. The petitioners argued that the typical structure and operation of a rural telephone cooperative makes it unlikely that affiliates of officers and directors of a rural telephone cooperative could exercise control over the cooperative.

5. Acknowledging the unique characteristics of rural telephone cooperatives, as compared with traditional business forms, the Commission in its *Part 1 Reconsideration Order,* adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperatives pursuant to which the gross revenues of the affiliates of the cooperative's officers and directors are not attributed to the applicant. Specifically, the gross revenues of the affiliates of a cooperative's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (2) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by section 153(37) of the Communications Act, as amended; and (3) the applicant (or the controlling interest) is eligible for tax-exempt status under section 501(c)(12) of the Internal Revenue Code. In the *Part 1 Reconsideration Order,* the Commission noted that the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interests' officers and directors) are available to the applicant. Also, the Commission noted that if an officer or director of a rural telephone cooperative is considered a controlling interest of the applicant under another subsection of the controlling interest attribution rule, this exemption does not apply. Through these measures the Commission has sought to prevent sham small businesses from obtaining bidding credits while ensuring that bidding credits are received by rural telephone cooperatives that are *bona fide* small businesses.

6. Consistent with the policy objectives underlying that decision, the Commission also granted three pending waiver requests filed by rural telephone cooperative applicants in Auction No. 44. Specifically, three winning bidders that are rural telephone cooperatives (or wholly-owned by rural telephone cooperatives) and which had filed substantively identical requests for waiver of § 1.2110(c)(2)(ii)(F) were granted waivers conditioned upon the submission of information demonstrating each applicant's compliance with rule adopted in the *Part 1 Reconsideration Order.* Certain winning bidders in Auction No. 49 also requested similar relief.

III. Discussion

A. Proposed Change to Exemption's Tax-Exempt Element

7. After adoption of the rural telephone cooperative exemption, the Commission received two petitions for reconsideration of the *Part 1 Reconsideration Order* asking the Commission to modify the eligibility requirements for the exemption by changing one part of the three-part eligibility standard. Specifically, petitioners ask the Commission to eliminate the prerequisite that the rural telephone cooperative applicant (or its controlling interest) be eligible for tax-exempt status under section 501(c)(12) of the Internal Revenue Code. Petitioners suggest that the Commission should instead employ a test based on a showing that the cooperative operates consistent with the cooperative principles enumerated in *Puget Sound.* For the reasons discussed below, the Commission revises the eligibility criteria in § 1.2110(b)(3)(iii)(A) to provide an alternative eligibility showing pursuant to which a rural telephone cooperative seeking to exempt from attribution gross revenues (or, where applicable, total assets) attributable through its officers or directors may show that it operates pursuant to the cooperative principles described in *Puget Sound.*

1. Section 501(c)(12) Tax-Exempt Status Criterion

8. The Commission included the tax-exemption criterion in the rule as a means of ensuring that only *bona fide* rural telephone cooperatives would be eligible to receive the benefits of this exemption. Parties participating in earlier stages of this proceeding had advised the Commission that rural telephone cooperatives were typically characterized by their tax-exempt status. Section 501(c)(12) of the Internal Revenue Code exempts a telephone cooperative from federal income tax only if 85 percent or more of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses. The Commission crafted this exemption based, in part, on the Commission's belief that a cooperative's tax status provided a bright-line rule for which compliance would create no additional burdens on cooperatives beyond their current obligations to comply with the tax code.

9. Petitioners maintain that compliance with the tax code's 85 percent member revenue test is an overly narrow standard for weeding out shams.

10. Petitioners argue that a rural telephone cooperative's tax status is irrelevant to whether or not the entity is controlled by an outside interest or has access to the resources of outside interests.

11. The Commission agrees that the tax-status of a rural telephone cooperative is independent of whether it is a *bona fide* cooperative.

2. Puget Sound Cooperative Principles

12. RCC suggests that the Commission should instead use the *Puget Sound* principles as an element of the eligibility standard for the part 1 attribution exemption. In *Puget Sound,* the Tax Court identified three basic principles of a cooperative: (1) Subordination of capital, both as regards control over the cooperative undertaking, and as regards the ownership of the cooperative's pecuniary benefits; (2) democratic control by the members; and (3) the vesting in and the allocation among the members of the excess of the operating revenues over the costs incurred in generating those revenues, and that this occur in proportion to the members' active participation in the cooperative endeavor. The IRS has regarded the *Puget Sound* principles as ''fundamental to cooperative operation'' and has subsequently incorporated these principles into analysis of the tax treatment of rural telephone cooperatives.

13. The Commission finds these principles of cooperative organization and operation are useful criteria for determining whether a rural telephone cooperative is a *bona fide* cooperative. The Commission believes that this change will ensure that the benefits of this exemption are limited to *bona fide* rural telephone cooperatives while providing such entities with the flexibility to further the public interest in expanding telecommunications and other advanced services to the public in rural areas. This revision may enhance the ability of rural telephone cooperatives to participate in spectrum auctions, which, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j). Therefore, the Commission amends §§ 1.2110(b)(3)(iii)(A)(3) and 1.2112(b)(2)(iv) to require that an applicant (or its controlling interest) that seeks to exempt the gross revenues (or, if applicable for purposes of determining entrepreneur eligibility pursuant to §§ 1.2110(b)(1)(ii) and 24.709, the total assets) of its officers or directors from attribution under § 1.2110(c) of the rules must demonstrate either that it is eligible for tax-exempt status under the Internal Revenue Code or that it operates pursuant to the cooperative principles set forth in *Puget Sound.*

14. Consistent with the Commission's approach in the *Part 1 Reconsideration Order* and the Commission's decision here, the Commission grant three pending waiver requests filed by rural telephone cooperative applicants in Auction No. 49.

B. Showing of Cooperative Organization in the Absence of State Certification

15. Among the eligibility criteria for the exemption to the Commission's attribution rules for rural telephone cooperatives is the requirement that the applicant for the exemption (or its controlling interest) be validly organized as a cooperative pursuant to state law. Petitioners point out that the *Puget Sound* cooperative principles are not duplicative of this first element of the three-part qualification test because the validity of a cooperative as a legal entity is independent of the structural factors that make it highly unlikely that rural telephone cooperatives could engage in the kinds of sham transaction that the attribution rule is designed to protect against.

16. Upon further review, the Commission clarifies how the Commission intends to apply this first element of § 1.2110(b)(3)(iii)(A) where there is no state incorporation statute specifically for cooperatives. In these circumstances, the applicant (or the controlling interest) must at the auction short-form application stage certify that it is validly organized under the most closely applicable organizing statute, and that such organization is reflected in its articles of incorporation, by-laws, and/or other relevant organic documents. Copies of all such relevant documents must be submitted to the Commission by winning bidders relying on this exemption in connection with its long-form license application in order to receive a license. The Commission believes that this clarification will provide flexibility for *bona fide* cooperatives to demonstrate their status in the absence of the possibility of state certification.

IV. Procedural Matters

A. Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis for this *Second Part 1 Reconsideration Order.*

B. Paperwork Reduction Act Analysis

18. The *Second Order on Reconsideration of the Part 1 Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified collection(s) contained in the proceeding.

V. Supplemental Final Regulatory Flexibility Analysis (Second Order on Reconsideration of the Part 1 Fifth Report and Order)

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the report and order section of the *Part 1 Fifth Report and Order* in WT Docket No. 97–82. In addition, a Supplemental FRFA was incorporated into the *Part 1 Reconsideration Order.* The Commission received two petitions for reconsideration in response to the *Part 1 Reconsideration Order.* This present second supplemental FRFA conforms to the RFA.

A. Need for, and Objectives of, the Second Order on Reconsideration of the Part 1 Fifth Report and Order

20. In May 2003, the Commission released its *Part 1 Reconsideration Order,* which addressed petitions received in response to the *Part 1 Fifth Report and Order* regarding the amendment of general competitive bidding rules for all auctionable services. Most pertinent for purposes of this Second Order on Reconsideration of the *Part 1 Fifth Report and Order,* the Commission in the *Part 1 Reconsideration Order* adopted a limited exemption from its general attribution rules for rural telephone cooperatives that meet specific conditions.

21. Based on the petitions and comments received in response to the *Part 1 Fifth Report and Order,* the Commission in its *Part 1 Reconsideration Order* adopted a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the exemption provided that the gross revenues of the affiliates of an applicant's officers and directors would not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (2) the applicant (or the controlling interest) is a ''rural telephone cooperative'' as defined by the Communications Act; and (3) the applicant (or the controlling interest) is eligible for tax-exempt status under the

Internal Revenue Code. However, the exemption would not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

22. The Commission received two petitions for reconsideration of the *Part 1 Reconsideration Order.* Petitioners request reconsideration of the tax-exempt criteria that the Commission uses to determine eligibility for the attribution rule exemption. Specifically, petitioners seek removal of the requirement that rural telephone cooperatives have tax-exempt status pursuant to section 501(c)(12) of the Internal Revenue Code. Petitioners suggest that this prerequisite be replaced by the requirement that the rural telephone cooperative applicant (or its controlling interest) adheres to the cooperative principles articulated by the U.S. Tax Court in *Puget Sound.* In the *Second Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission resolves the petitions for reconsideration filed in response to the *Part 1 Reconsideration Order.*

23. Based upon the petitions for reconsideration, we will permit a rural telephone cooperative applicant (or its controlling interest) to demonstrate that the rural telephone cooperatives in question is eligible for tax-exempt status pursuant to section 501(c)(12) of the Internal Revenue Code or that it (or its controlling interest) adheres to the cooperative principles articulated in *Puget Sound.* The purpose of the exemption for rural telephone cooperatives, which is to identify the *bona fide* small businesses among rural telephone cooperatives and prevent sham small businesses rural telephone cooperatives from obtaining designated entity preferences. The Commission has determined that a requirement that rural telephone cooperative be section 501(c)(12) tax-exempt organizations may inadvertently exclude *bona fide* rural telephone cooperatives in some cases and may therefore undercut the purpose of the exemption.

24. Also, on its own motion, the Commission has decided that if the applicant is organized in a state that does not have rules or regulations specific to organizing an entity as a cooperative, the applicant may use its by-laws or other relevant documents to demonstrate that it is a cooperative. This new provision provides a means by which applicants can demonstrate organization as a *bona fide* cooperative even if organized in a state that does not designate specific conditions for cooperative organization.

B. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

25. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

26. The rule modifications and clarifications adopted in the *Part 1 Reconsideration Order* are of general applicability to all services and do not apply on a service-specific basis. Therefore, this SFRFA provides a general analysis of the impact of the revised part 1 rule on small businesses rather than a service by service analysis. Accordingly, the revised rules will apply to all entities that apply to participate in Commission auctions, including both small and large entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1899 out of a total of 2432 qualified bidders have either claimed eligibility for small business bidding credits or self-reported status as a small business as that term has been defined under rules adopted by the Commission for specific services. (These figures do not generally include applicants for auctions of broadcast licenses where sized-based bidding preferences have not been available).

C. Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements

27. All license applicants that are rural telephone cooperative seeking an exemption from the attribution rules that are part of the Commission's general competitive bidding rules found in part 1 of the Commission's rules are subject to the reporting and record-keeping requirements associated with qualifying for the exemption. These requirements apply in the same way to both large and small entities. Furthermore, applicants are required to apply for spectrum auctions by filing a short-form application (FCC Form 175) prior to the auction. Applicants are also required to file a long-form application (FCC Form 601) at the conclusion of the auction. Specifically, entities seeking status as a small business must disclose on their FCC Form 175s, FCC Form 601s, and on their application for assignment or transfer of control (FCC Form 603), separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous three years.

28. As a result of the actions taken in the, rural telephone cooperative auction applicants, or those controlled by rural telephone cooperatives, seeking an exemption from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant must establish eligibility for this exemption based upon the factors listed above, which have been modified, in part, by the *Second Order on Reconsideration of the Part 1 Fifth Report and Order.*

D. Steps Taken to Minimize the Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities. The Commission has considered the economic impact on small entities of the following modifications and clarifications adopted in the *Second Order on Reconsideration of the Part 1 Fifth Report and Order* and has taken steps to minimize the burdens on small entities.

30. Application of attribution rule to rural telephone cooperatives. Based on the petitions and comments received in response to the *Second Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission modifies a narrow exemption for the officers and directors of a rural telephone cooperative that it adopted so that the rural telephone cooperative does not have to be tax-exempt entity pursuant to section 501(c)(12) of the Internal Revenue Code in order to qualify for the exemption from the

attribution rules for the Commission part 1 competitive bidding rule. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law or, where there is no state law, the applicant must certify that it is organized according to commonly accepted cooperative principles as demonstrated by its by-laws, charter, or any other relevant document(s); (2) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and (3) the applicant (or the controlling interest) demonstrates either that it is eligible for tax-exempt status under the Internal Revenue Code or that it adheres to the cooperative principles articulated in Puget Sound. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

31. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j).

E. Report to Congress

32. The Commission will send a copy of the *Second Order on Reconsideration of the Fifth Report and Order,* including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration of the Fifth Report and Order,* including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Order on Reconsideration of the Third Report and Order* and SFRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

33. Accordingly, *it is ordered that,* pursuant to the authority granted in sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j), the petitions for reconsideration of the *Part 1 Reconsideration Order* filed by a group comprising National Telecommunications Cooperative Association, the Rural Telecommunications Group, the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and the law firm of Kraskin, Lesse & Cosson, and a group comprising Cable & Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. ARE, to the extent they are addressed herein, *granted.*

34. *It is further ordered* that pursuant to the authority granted in sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, *as amended,* 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), the *Second Order on Reconsideration of the Part 1 Fifth Report and Order, is hereby adopted* and part 1, subpart Q of the Commission's rules is amended as set forth in Appendix A of the *Second Order on Reconsideration of the Part 1 Fifth Report and Order,* effective 60 days after publication in the **Federal Register**. The information collection contained in these rules will become effective 70 days after publication in the **Federal Register**, following Office of Management and Budget approval, unless a notice published in the **Federal Register** stating otherwise.

35. *It is further ordered* that the requests of Adams Telecom, Inc., Cable and Communications Corporation, Grand River Communications, Inc., Northeast Nebraska Telephone Company, Poka Lambro Telecommunications, Ltd., S.E.I. Data, Inc., and WCTA Wireless, Inc. for waiver of § 1.2110(c)(2)(ii)(F) as presented in their Applications to Participate in an FCC Auction (FCC Form 175) for Auction No. 49 *are granted,* conditioned upon the submission to the Commission of information demonstrating compliance with 47 CFR 1.2112(b)(2)(iv), as revised herein, and petitioners Cable and Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. will also be permitted to qualify for this exemption by submitting to the Commission information demonstrating the applicant's compliance with 47 CFR 1.2112(b)(2)(vi), as revised herein.

36. *It is further ordered* that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.331, the Chief of the Wireless Telecommunications Bureau *is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

List of Subjects in 47 CFR Part 1

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Amend § 1.2110 by revising paragraph (b)(3)(iii)(A) to read as follows:

§ 1.2110 Designated entities

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A)(*1*) An applicant will be exempt from § 1.2110(c)(2)(ii)(F) for the purpose of attribution in § 1.2110(b)(1), if the applicant or a controlling interest in the applicant, as the case may be, meets all of the following conditions:

(*i*) The applicant (or the controlling interest) is organized as a cooperative pursuant to state law;

(*ii*) The applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and

(*iii*) The applicant (or the controlling interest) demonstrates either that it is eligible for tax-exempt status under the Internal Revenue Code or that it adheres to the cooperative principles articulated in *Puget Sound Plywood, Inc.* v. *Commissioner of Internal Revenue,* 44 T.C. 305 (1965).

(*2*) If the condition in paragraph (b)(3)(iii)(A)(*1*)(*i*) above cannot be met because the relevant jurisdiction has not enacted an organic statute that specifies requirements for organization as a cooperative, the applicant must show that it is validly organized and its articles of incorporation, by-laws, and/or other relevant organic documents provide that it operates pursuant to cooperative principles.

* * * * *

3. Amend § 1.2112 by revising paragraph (b)(2)(vi) to read as follows:

§ 1.2112 Ownership disclosure requirements for applications.

* * * * *

(b) * * *

(2) * * *

(vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to § 1.2110, all documentation to establish eligibility pursuant to the factors listed under § 1.2110(b)(3)(iii)(A).

[FR Doc. 05–19519 Filed 9–29–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, 213, and 252

[DFARS Case 2003–D040]

Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove policy on Central Contractor Registration (CCR) that duplicated policy found in the Federal Acquisition Regulation (FAR). The rule also addresses requirements for use of Commercial and Government Entity (CAGE) codes in DoD contracts.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2003–D040.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 64557 on November 14, 2003, to remove DFARS requirements for contractors to register in the CCR database, since policy on this subject had been added to the FAR. The interim rule also addressed requirements for inclusion of CAGE codes on contracts and in the CCR database to accommodate DoD payment systems.

Three sources submitted comments on the interim DFARS rule. A discussion of the comments is provided below.

1. *Comment: Provision of DUNS numbers and CAGE codes.* One respondent stated that the interim rule appeared to require contracting officers to provide both a DUNS number and a CAGE code on contractual documents submitted to the payment office, whereas the previous DFARS coverage required either a DUNS number or a CAGE code.

DoD Response: The final rule revises DFARS 204.1103(e) to clarify that contracting officers must include the contractor's CAGE code on contractual documents transmitted to the payment office, instead of the DUNS number.

2. *Comment: Timely assignment of CAGE codes.* One respondent recommended adding a statement to the rule to address the need for the Defense Logistics Information Service to assign CAGE codes in a timely manner, to avoid payment delays and payment of interest.

DoD Response: DoD agrees that timely assignment of CAGE codes is important. However, such a statement is considered unnecessary for inclusion in the DFARS.

3. *Comment: Contractor failure to provide correct or current CCR information.* One respondent provided an example of a contractor's failure to maintain current information in the CCR database.

DoD Response: Contractors are responsible for maintaining CCR information and are required to review and update their information annually to ensure it is current, accurate, and complete.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds no new requirements for contractors. The rule removes DFARS text on Central Contractor Registration that has become obsolete as a result of policy that was added to the FAR, and retains existing requirements for use of Commercial and Government Entity codes in DoD contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204, 212, 213, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 204, 212, 213, and 252, which was published at 68 FR 64557 on November 14, 2003, is adopted as a final rule with the following change:

PART 204–ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 204 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 204.1103 is revised to read as follows:

204.1103 Procedures.

■ (e) On contractual documents transmitted to the payment office, provide the Commercial and Government Entity code, instead of the DUNS number or DUNS+4 number, in accordance with agency procedures.

[FR Doc. 05–19464 Filed 9–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 217, and 246

[DFARS Case 2003–D101]

Defense Federal Acquisition Regulation Supplement; Quality Control of Aviation Critical Safety Items and Related Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004. Section 802 requires DoD to establish a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D101.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 69 FR 55987 on September 17, 2004, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 802 requires DoD to prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items. The interim rule identified the responsibilities of the head of the design control activity with regard to quality control of aviation critical safety items and related services.

Six respondents submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* One respondent suggested there might be confusion between the head of the contracting activity for the procuring activity of an aviation critical safety item and the head of the contracting activity for the design control activity. A proposed change was suggested to clarify this issue.

DoD Response: The final rule amends DFARS 209.270–3(a) to clarify that the policy in that paragraph applies to the head of the contracting activity responsible for procuring an aviation critical safety item.

2. *Comment:* Two respondents recommended clarification as to who has responsibility for identifying and determining aviation critical safety items.

DoD Response: The final rule adds a paragraph at DFARS 209.270–4(a)(1) to clarify that the head of the design control activity is responsible for identifying items that meet the criteria for designation as aviation critical safety items.

3. *Comment:* Six respondents requested clarification as to whether the authority to disposition minor nonconformances in aviation critical safety items can be delegated, and recommended that the DFARS state that delegation can be authorized.

DoD Response: The final rule amends DFARS 246.407(S–70) to state that acceptance of minor nonconformances in aviation critical safety items may be delegated as determined appropriate by the design control activity.

4. *Comment:* Two respondents requested clarification as to whether the rule applies only to Government contract awards or if prime contractors must obtain design control activity approval of subcontracts for aviation critical safety items.

DoD Response: Clarification of this issue in the DFARS rule is considered unnecessary. Unless otherwise stated, DFARS policy applies to contracts awarded by the Government.

5. *Comment:* One respondent recommended clarification of the connection between the DFARS rule and qualified products list policies.

DoD Response: Clarification of this issue in the DFARS rule is considered unnecessary. However, DoD is presently drafting a joint service/agency instruction that will address this issue.

6. *Comment:* One respondent asked whether the rule would apply to commercial items acquired under FAR Part 12 or commercial aviation systems and components governed by Federal Aviation Administration (FAA) regulations.

DoD Response: The draft joint service/agency instruction will make it clear that aviation critical safety item policies do not apply to commercial aircraft or subsystems purchased and maintained in accordance with FAA regulations unless specifically required by the military department.

7. *Comment:* Three respondents questioned whether there would be drawing changes and new reporting requirements as a result of the rule and how the costs associated with these changes would be reimbursed.

DoD Response: The rule contains no requirements for drawing changes or new reporting. Such changes would be determined on a case-by-case basis or would be addressed in policy issued by the requirements community.

8. *Comment:* Two respondents expressed concern that the rule would result in changes to approved quality systems, additional requirements for disposal of critical safety items, and additional acceptance testing.

DoD Response: The rule does not address these issues. Such changes would be determined on a case-by-case basis or would be addressed in policy issued by the requirements community.

9. *Comment:* One respondent recommended that DoD look for synergy between the unique item identification policy and aviation critical safety item policy.

DoD Response: DoD is looking at unique item identification as a facilitator for product identification, serialization, and tracking.

10. *Comment:* Two respondents expressed concern that the rule could have a significant economic impact on small businesses due to (1) new qualification standards established by the heads of the design control activities, and (2) significant differences that exist between contractor/original equipment manufacturer critical component designations and DoD critical safety item designations.

DoD Response: These issues are addressed in the final regulatory flexibility analysis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized below. A copy of the analysis may be obtained from the point of contact specified herein.

The objective of the rule is to give the head of the design control activity responsibility for the quality control of aviation critical safety items, including identifying and designating these items, and approval of sources, products, and offerors prior to contract award. Two respondents expressed concern that there could be significant economic impact on small businesses or original equipment manufacturers (OEMs) due to (1) new qualification standards established by the heads of design control activities, and (2) significant differences that exist between contractor/OEM critical component designations and DoD critical safety item designations. If a small business has previously been approved to furnish an aviation critical safety item, has furnished the item within the past 3 years, and has a good quality track record, there should be no impact on that business. Many small businesses fall into this category. If a small business did not go through the approval process but furnished the aviation critical safety item within the past 3 years, the Government will check the company's quality track record and test samples from DoD inventory to ensure conformity. When the company next receives a contract for the aviation critical safety item, the Government will request commonly generated manufacturing, quality, and inspection information. The 3-year timeframe is consistent with established Government and nongovernment qualification requirements, particularly those relating to the aerospace sector. DoD Qualified Products List and Qualified Manufacturers List procedures require revalidation every 2 years. The Society of Automotive Engineers standard AS9102 on Aerospace First Article Inspection requires reinspection of an aerospace part if there has been a lapse in production for 2 years or as specified by the customer. The Federal Aviation Administration's Advisory Circular 00–

56A, Voluntary Industry Distributor Accreditation Program, establishes that civil aerospace parts distributors may not exceed the 24-month requirement if they were accredited prior to revision of the circular and that accredited distributors shall be audited at least once every 36 months. The Aviation Suppliers Association Quality System Standard ASA–100 requires an accreditation audit every 36 months and a surveillance audit during the 36-month period. The National Aerospace and Defense Contractors Accreditation Program (NADCAP)—Performance Review Institute (PRI) establishes product qualification to be generally valid for 3 years or as determined by the specific Qualified Products Group.

In calendar year 2003, the year before the interim rule took effect, 62.8% of Defense Logistics Agency (DLA) contracts for currently identified aviation critical safety items were awarded to small businesses. During the first 8 months of calendar year 2005 (the year after the interim rule became effective), 62.9% of DLA contracts for critical safety items were awarded to small businesses. There has been no significant impact on contract awards to small businesses as a result of the DFARS rule.

Regardless of whether the contractor or DoD designates an item as a critical safety item, the contractor is required to deliver conforming products. This is especially important when the consequences of item failure could be catastrophic. Small businesses that understand the design intent of a critical safety item, and the item's application in the weapon system, its critical attributes, and its failure implications, should have high-performing manufacturing, supplier management, and quality control processes. While the contractor/OEM and DoD may have different methods of categorizing parts, the critical safety item designation is not expected to have a significant cost impact on small businesses with approved quality systems.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 217, and 246

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 209, 217, and 246, which was published at 69 FR 55987 on September 17, 2004, is adopted as a final rule with the following changes:

PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR parts 209 and 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 209.270–3 is amended by revising paragraph (a) to read as follows:

209.270–3 Policy.

(a) The head of the contracting activity responsible for procuring an aviation critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

* * * * *

■ 3. Section 209.270–4 is amended by removing the introductory text and revising paragraph (a) to read as follows:

209.270–4 Procedures.

(a) The head of the design control activity shall—

(1) Identify items that meet the criteria for designation as aviation critical safety items. See additional information at PGI 209.270–4;

(2) Approve qualification requirements in accordance with procedures established by the design control activity; and

(3) Qualify and identify aviation critical safety item suppliers and products.

* * * * *

PART 246—QUALITY ASSURANCE

■ 4. Section 246.407 is amended by revising paragraph (S–70) to read as follows:

246.407 Nonconforming supplies or services.

* * * * *

(S–70) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation critical safety items or nonconforming modification, repair, or overhaul of such items (see 209.270). Authority for acceptance of minor nonconformances in aviation critical safety items may be delegated as determined appropriate by the design control activity. See additional information at PGI 246.407.

[FR Doc. 05–19462 Filed 9–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2005–D020]

Defense Federal Acquisition Regulation Supplement; Extension of Partnership Agreement—8(a) Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect an extension in the expiration date of a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement permits DoD to award contracts to 8(a) Program participants on behalf of SBA.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2005–D020.

SUPPLEMENTARY INFORMATION:

A. Background

By partnership agreement dated February 1, 2002, between the SBA and DoD, the SBA delegated to DoD its authority to enter into contracts under Section 8(a) of the Small Business Act (15 U.S.C. 637(a)). The expiration date of the partnership agreement has been extended from September 30, 2005, to September 30, 2006. This final rule amends DFARS 219.800 to reflect the extension.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not

required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2005–D020.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

219.800 [Amended]

■ 2. Section 219.800 is amended in paragraph (a), in the last sentence, by removing ''2005'' and adding in its place ''2006''.

[FR Doc. 05–19456 Filed 9–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2005–D019]

Defense Federal Acquisition Regulation Supplement; Defense Logistics Agency Waiver Authority

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize the Defense Logistics Agency Component Acquisition Executive to waive domestic source restrictions on the acquisition of ball and roller bearings, when adequate domestic supplies are not available to meet DoD requirements on a timely basis.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2005–D019.

SUPPLEMENTARY INFORMATION:

A. Background

The annual DoD appropriations acts restrict the acquisition of ball and roller bearings to those produced by a domestic source and of domestic origin (Section 8064 of the Fiscal Year 2001 DoD Appropriations Act (Public Law 106–259) and similar sections in subsequent DoD appropriations acts). The appropriations acts provide that the Secretary of the military department responsible for the procurement may waive the restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet DoD requirements on a timely basis, and that such an acquisition must be made in order to acquire capability for national security purposes. This final rule revises DFARS 225.7009–3(c) to delegate this waiver authority to the Defense Logistics Agency (DLA) Component Acquisition Executive, for DLA acquisitions that meet the specified criteria.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2005–D019.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 225.7009–3 is amended by revising paragraph (c) introductory text to read as follows:

225.7009–3 Waiver.

* * * * *

(c) The Secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009–1(b), on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

* * * * *

[FR Doc. 05–19457 Filed 9–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 229, and 252

[DFARS Case 2004–D012]

Defense Federal Acquisition Regulation Supplement; Prohibition of Foreign Taxation on U.S. Assistance Programs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statutory prohibition on foreign taxation under contracts funded by U.S. assistance programs. The rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

DATES: This interim rule is effective September 30, 2005. Comments on the interim rule should be submitted in writing to the address shown below on or before November 29, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D012, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

• E-mail: *dfars@osd.mil.* Include DFARS Case 2004–D012 in the subject line of the message.

• Fax: (703) 602–0350.

• Mail: Defense Acquisition Regulations Council, Attn: Ms. Debra Overstreet, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Debra Overstreet, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds policy and a contract clause to implement Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108–7), Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and Section 506 of Division D of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). These statutes require that a bilateral agreement providing for U.S. assistance to a foreign country must specify that the U.S. assistance shall be exempt from taxation by the foreign government. Therefore, the foreign government is prohibited from imposing taxes on commodities acquired under contracts funded by such U.S. assistance. The interim rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the administrative notification requirements of the rule are expected to affect less than 10 contracts per year. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D012.

C. Paperwork Reduction Act

The information collection requirements of the rule do not reach the threshold for requiring Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108–7), Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and Section 506 of Division D of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). These statutes prohibit a government of a foreign country from imposing taxes on the United States under contracts funded by U.S. assistance provided to that country. The rule is needed for effective implementation of the statutory prohibition, as it addresses requirements for prompt notification to the appropriate parties if a foreign government imposes such taxes, so that corrective action can be taken. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR part 225, 229, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225, 229, and 252 are amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR parts 225, 229, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

■ 2. Section 225.7301 is amended by adding paragraph (e) to read as follows:

225.7301 General.

* * * * *

(e) See 229.170 for policy on contracts financed under U.S. assistance programs that involve payment of foreign country value added taxes or customs duties.

PART 229—TAXES

■ 3. Sections 229.170 through 229.170–4 are added to read as follows:

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170–1 Definition.

Commodities, as used in this section, means any materials, articles, supplies, goods, or equipment.

229.170–2 Policy.

(a) By law, bilateral agreements with foreign governments must include a provision that commodities acquired under contracts funded by U.S. assistance programs shall be exempt from taxation by the foreign government. If taxes or customs duties nevertheless are imposed, the foreign government must reimburse the amount of such taxes to the U.S. Government (Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108–7), as amended by Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and similar sections in subsequent acts).

(b) This foreign tax exemption—

(1) Applies to a contract or subcontract for commodities when—

(i) The funds are appropriated by the annual foreign operations appropriations act; and

(ii) The value of the contract or subcontract is $500 or more;

(2) Does not apply to the acquisition of services;

(3) Generally is implemented through letters of offer and acceptance, other country-to-country agreements, or Federal interagency agreements; and

(4) Requires reporting of noncompliance for effective implementation.

229.170–3 Reports.

The contracting officer shall submit a report to the designated Security Assistance Office when a foreign government or entity imposes tax or customs duties on commodities acquired under contracts or subcontracts meeting the criteria of 229.170–2(b)(1). Follow the procedures at PGI 229.170–3 for submission of reports.

229.170–4 Contract clause.

Use the clause at 252.229–7011, Reporting of Foreign Taxes—U.S. Assistance Programs, in solicitations and contracts funded with U.S. assistance appropriations provided in the annual foreign operations appropriations act.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.229–7011 is added to read as follows:

252.229–7011 Reporting of Foreign Taxes—U.S. Assistance Programs.

As prescribed in 229.170–4, use the following clause:

Reporting of Foreign Taxes—U.S. Assistance Programs (SEP 2005)

(a) *Definition. Commodities,* as used in this clause, means any materials, articles, supplies, goods, or equipment.

(b) Commodities acquired under this contract shall be exempt from all value added taxes and customs duties imposed by the recipient country. This exemption is in addition to any other tax exemption provided through separate agreements or other means.

(c) The Contractor shall inform the foreign government of the tax exemption, as documented in the Letter of Offer and Acceptance, country-to-country agreement, or interagency agreement.

(d) If the foreign government or entity nevertheless imposes taxes, the Contractor shall promptly notify the Contracting Officer and shall provide documentation showing that the foreign government was apprised of the tax exemption in accordance with paragraph (c) of this clause.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for commodities that exceed $500.

(End of clause)

[FR Doc. 05–19463 Filed 9–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003–D042]

Defense Federal Acquisition Regulation Supplement; Advisory and Assistance Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of advisory and assistance services. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D042.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This final rule is a result of the DFARS Transformation initiative. The rule—

• Deletes the definition of ''advisory and assistance services'' at DFARS 237.201. The definition is used primarily for budget reporting under 10 U.S.C. 2212, and is adequately addressed in financial management regulations.

• Deletes obsolete text on contracting for engineering and technical services at DFARS 237.203. This text was based on DoD Directive 1130.2, Engineering and Technical Sevices—Management Control, which was cancelled in 1990.

• Deletes a reference listing of DoD publications that govern the conduct of audits at DFARS 237.270. This list has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi.*

• Deletes obsolete text on management controls and requesting activity responsibilities at DFARS 237.271 and 237.272. This text was based on OMB Circular A–120, Guidelines for the Use of Advisory and Assistance Services, which was rescinded in 1993. OMB Circular A–120 was replaced by OFPP Policy Letter 93–1, Management Oversight of Service Contracting, which is implemented in FAR Subpart 37.5.

DoD published a proposed rule at 70 FR 8562 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD policy for the acquisition of advisory and assistance services.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

■ 1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

237.201 and 237.203 [Removed]

■ 2. Sections 237.201 and 237.203 are removed.

■ 3. Section 237.270 is revised to read as follows:

237.270 Acquisition of audit services.

(a) *General policy.* (1) Do not contract for audit services unless—

(i) The cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization; or

(ii) Temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) See PGI 237.270 for a list of DoD publications that govern the conduct of audits.

(b) *Contract period.* Except in unusual circumstances, award contracts for recurring audit services for a 1-year period with at least 2 option years.

(c) *Approvals.* Do not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) *Solicitation provisions and contract clauses.* (1) Use the provision at

252.237–7000, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237–7001, Compliance with Audit Standards, in solicitations and contracts for audit services.

237.271 and 237.272 [Removed]

■ 4. Sections 237.271 and 237.272 are removed.

[FR Doc. 05–19458 Filed 9–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

Damage Prevention Program

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 186 to 199, revised as of October 1, 2004, on page 81, in § 192.614 paragraph (c)(5) is corrected by removing the word ''possible'' and adding in its place the word ''practical''.

[FR Doc. 05–55512 Filed 9–29–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2005–22233]

List of Nonconforming Vehicles; Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2004, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about 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. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements but to provide a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. The agency believes that this impact is minimal and does not warrant the preparation of a regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The

following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no direct effect 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 E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) 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 more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002, which expires on July 31, 2007.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under E.O. 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was prepared in September, 2004.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 400 to 599, which is due for revision on October 1, 2005, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, part 593 of title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation*, is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined to be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically by make. Eligible models within each make are listed numerically by ''VSA,'' ''VSP,'' or ''VCP'' number.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1980–1989'' means ''1980 through 1989'').

(d) The initials ''MC'' used in the Manufacturer column mean ''motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989. (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208. (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214. (d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991. (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208. (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216. (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216. (e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

Vehicles Manufactured for Other Than the Canadian Market

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Acura	51			Legend		1988
Acura	77			Legend		1989
Acura	305			Legend		1990–1992
Alfa Romeo	196			164		1989
Alfa Romeo	76			164		1991
Alfa Romeo	156			164		1994
Alfa Romeo	124			GTV		1985
Alfa Romeo	70			Spider		1987
Aston Martin	430			Vanquish		2002–2004
Audi	223			80		1988–1989
Audi	93			100		1989
Audi	317			100		1990–1992
Audi	244			100		1993
Audi	160			200 Quattro		1985
Audi	352			A4		1996–2000
Audi	400			A4, RS4, S4	8D	2000–2001
Audi	332			A6		1998–1999
Audi	337			A8		1997–2000
Audi	424			A8		2000
Audi	238			Avant Quattro		1996
Audi	443			RS6 & RS Avant		2003

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Audi	428			S6		1996
Audi	424			S8		2000
Audi	364			TT		2000–2001
Bimota (MC)	397			DB4		2000
Bimota (MC)	397			SB8		1999–2000
BMW		66		316		1980–1982
BMW	25			316		1986
BMW	248			3 Series		1995–1997
BMW	462			3 Series		1998
BMW	379			3 Series		1999
BMW	356			3 Series		2000
BMW	379			3 Series		2001
BMW		23		318i, 318iA		1981–1982
BMW		23		318i, 318iA		1983
BMW		23		318i, 318iA		1984–1985
BMW		23		318i, 318iA		1986
BMW		23		318i, 318iA		1987–1989
BMW		16		320, 320i, 320iA		1984–1985
BMW	283			320i		1990–1991
BMW		16		320i & 320iA		1980–1983
BMW		67		323i		1980–1985
BMW		30		325, 325i, 325iA, 325E		1985–1986
BMW		24		325e, 325eA		1984–1987
BMW	96			325i		1991
BMW	197			325i		1992–1996
BMW		30		325i, 325iA		1987–1989
BMW		31		325iS, 325iSA		1987–1989
BMW	205			325iX		1990
BMW		33		325iX, 325iXA		1988–1989
BMW	194			5 Series		1990–1995
BMW	249			5 Series		1995–1997
BMW	314			5 Series		1998–1999
BMW	345			5 Series		2000
BMW	414			5 Series		2000–2002
BMW	450			5 Series		2003–2004
BMW	4			518i		1986
BMW		68		520, 520i		1980
BMW		68		520, 520i		1981
BMW		68		520, 520i		1982–1983
BMW	9			520iA		1989
BMW		26		524tdA		1985–1986
BMW		69		525, 525i		1980
BMW		69		525, 525i		1981
BMW		69		525, 525i		1982
BMW	5			525i		1989
BMW		21		528e, 528eA		1982–1988
BMW		20		528i, 528iA		1980–1981
BMW		20		528i, 528iA		1982–1984
BMW		22		533i, 533iA		1983–1984
BMW		25		535i, 535iA		1985–1989
BMW	15			625CSi		1981
BMW	32			628CSi		1980
BMW		18		633CSi, 630CSiA		1980–1984
BMW		27		635, 635CSi, 635CSiA		1980–1984
BMW		27		635CSi, 635CSiA		1985–1989
BMW	299			7 Series		1990–1991
BMW	232			7 Series		1992
BMW	299			7 Series		1993–1994
BMW	313			7 Series		1995–1999
BMW	366			7 Series		1999–2001
BMW		70		728, 728i		1980–1985
BMW	14			728i		1986
BMW		71		730, 730i, 730iA		1980
BMW	6			730iA		1988
BMW		72		732i		1980–1984
BMW		19		733i, 733iA		1980–1984
BMW		28		735, 735i, 735iA		1980–1984
BMW		28		735i, 735iA		1985–1989
BMW		73		745i		1980–1986
BMW	361			8 Series		1991–1995
BMW	396			850 Series		1997
BMW	10			850i		1990

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
BMW		78		All other passenger car models except those in the M1 and Z1 series.		1980–1989
BMW		29		L7		1986–1987
BMW		35		M3		1988–1989
BMW		34		M5		1988
BMW		32		M6		1987–1988
BMW	459			X5 (manufactured 1/1/03–12/31/04)		2003–2004
BMW	260			Z3		1996–1998
BMW	350			Z8		2000–2001
BMW	406			Z8		2002
BMW (MC)	228			K1		1990–1993
BMW (MC)	285			K100		1984–1992
BMW (MC)	303			K1100, K1200		1993–1998
BMW (MC)	229			K75S		1987–1995
BMW (MC)	465			R100		1981
BMW (MC)	231			R1100		1994–1997
BMW (MC)	368			R1100		1998–2001
BMW (MC)	177			R1100RS		1994
BMW (MC)	453			R1150GS		2000
BMW (MC)	359			R1200C		1998–2001
BMW (MC)	295			R80, R100		1986–1995
Bristol Bus			2	VRT Bus—Double Decker		1980–1981
Buell (MC)	399			All Models		1995–2002
Cadillac	300			DeVille		1994–1999
Cadillac	448			DeVille (manufactured 8/1/99–12/31/00)		2000
Cadillac	375			Seville		1991
Cagiva	444			Gran Canyon 900 motorcycle		1999
Chevrolet	150			400SS		1995
Chevrolet	298			Astro Van		1997
Chevrolet	405			Blazer		1986
Chevrolet	349			Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997
Chevrolet	461			Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001
Chevrolet	435			Camaro		1999
Chevrolet	369			Cavalier		1997
Chevrolet	365			Corvette		1992
Chevrolet	419			Corvette Coupe		1999
Chevrolet	242			Suburban		1989–1991
Chrysler	344			Daytona		1992
Chrysler	373			Grand Voyager		1998
Chrysler	276			LHS (manufactured for sale in Mexico)		1996
Chrysler	216			Shadow (Middle Eastern Market)		1989
Chrysler	273			Town and Country		1993
Citroen			1	XM		1990–1992
Daimler	12			Limousine		1985
Dodge	135			Ram		1994–1995
Ducati (MC)	241			600SS		1992–1996
Ducati (MC)	421			748		1999–2003
Ducati (MC)	220			748 Biposto		1996–1997
Ducati (MC)	452			900		2001
Ducati (MC)	201			900SS		1991–1996
Ducati (MC)	421			916		1999–2003
Ducati (MC)	398			996R		2001–2002
Ducati (MC)	407			Monster 600		2001
Eagle	323			Vision		1994
Ferrari		76		208, 208 Turbo (all models)		1980–1988
Ferrari		36		308		1980
Ferrari		36		308 (all models)		1981–1985
Ferrari		37		328 (all models)		1985
Ferrari		37		328 (all models)		1988–1989
Ferrari		37		328 GTS		1986–1987
Ferrari	86			348 TB		1992
Ferrari	161			348 TS		1992
Ferrari	376			360		2001
Ferrari	433			360 (manufactured after August 31, 2002)		2002
Ferrari	402			360 (manufactured before September 1, 2002)		2002
Ferrari	327			360 Modena		1999–2000
Ferrari	446			360 Series		2004
Ferrari	410			360 Spider & Coupe		2003
Ferrari	256			456		1995
Ferrari	408			456 GT & GTA		1997–1998

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Ferrari	445			456 GT & GTA		1999
Ferrari	173			512 TR		1993
Ferrari	377			550		2001
Ferrari	292			550 Marinello		1997–1999
Ferrari	415			575		2002–2003
Ferrari	436			Enzo		2003–2004
Ferrari	259			F355		1995
Ferrari	355			F355		1996–1998
Ferrari	391			F355		1999
Ferrari	226			F50		1995
Ferrari		38		GTO		1985
Ferrari		74		Mondial (all models)		1980–1989
Ferrari		39		Testarossa		1987–1988
Ferrari		39		Testarossa		1989
Ford	265			Bronco (manufactured in Venezuela)		1995–1996
Ford	322			Escort (Nicaraguan)		1996
Ford			9	Escort RS Cosworth		1994–1995
Ford	268			Explorer (manufactured in Venezuela)		1991–1998
Ford	425			F150		2000
Ford	367			Mustang		1993
Ford	471			Mustang		1997
Ford	250			Windstar		1995–1998
Freightliner	179			FLD12064ST		1991–1996
Freightliner	178			FTLD112064SD		1991–1996
GMC	383			Jimmy		1980
GMC	134			Suburban		1992–1994
Harley Davidson (MC)	202			FX, FL, XL Series		1980–1997
Harley Davidson (MC)	253			FX, FL, XL Series		1998
Harley Davidson (MC)	281			FX, FL, XL Series		1999
Harley Davidson (MC)	321			FX, FL, XL Series		2000
Harley Davidson (MC)	362			FX, FL, XL Series		2001
Harley Davidson (MC)	372			FX, FL, XL Series		2002
Harley Davidson (MC)	393			FX, FL, XL Series		2003
Harley Davidson (MC)	422			FX, FL, XL Series		2004
Harley Davidson (MC)	472			FX, FL, XL Series		2005
Harley Davidson (MC)	374			VRSCA		2002
Harley Davidson (MC)	394			VRSCA		2003
Harley Davidson (MC)	422			VRSCA		2004
Hobby			29	Exclusive 650 KMFE Trailer		2002–2003
Hobson			8	Horse Trailer		1985
Honda	280			Accord		1991
Honda	319			Accord		1992–1999
Honda	451			Accord (sedan & wagon (RHD))		1994–1997
Honda	128			Civic DX Hatchback		1989
Honda	447			CRV		2002
Honda	191			Prelude		1989
Honda	309			Prelude		1994–1997
Honda (MC)	440			CB 750 (CB750F2T)		1996
Honda (MC)	106			CB1000F		1988
Honda (MC)			22	CBR 250		1989–1994
Honda (MC)	348			CMX250C		1980–1987
Honda (MC)	174			CP450SC		1986
Honda (MC)	358			RVF 400		1994–2000
Honda (MC)	290			VF750		1994–1998
Honda (MC)	358			VFR 400		1994–2000
Honda (MC)			24	VFR 400, RVF 400		1989–1993
Honda (MC)	34			VFR750		1990
Honda (MC)	315			VFR750		1991–1997
Honda (MC)	315			VFR800		1998–1999
Honda (MC)	294			VT600		1991–1998
Hyundai	269			Elantra		1992–1995
Jaguar	78			Sovereign		1993
Jaguar	411			S–Type		2000–2002
Jaguar		41		XJ6		1980–1983
Jaguar		41		XJ6		1984
Jaguar		41		XJ6		1985–1986
Jaguar	47			XJ6		1987
Jaguar	215			XJ6 Sovereign		1988
Jaguar		40		XJS		1980
Jaguar		40		XJS		1981–1985
Jaguar		40		XJS		1986–1987
Jaguar	175			XJS		1991

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Jaguar	129			XJS		1992
Jaguar	195			XJS		1994–1996
Jaguar	336			XJS, XJ6		1988–1990
Jaguar	330			XK–8		1998
Jeep	254			Cherokee		1993
Jeep	180			Cherokee		1995
Jeep	211			Cherokee (European Market)		1991
Jeep	164			Cherokee (Venezuelan)		1992
Jeep	404			Grand Cherokee		1994
Jeep	431			Grand Cherokee		1997
Jeep	382			Grand Cherokee		2001
Jeep	389			Grand Cherokee (LHD—Japanese market)		1997
Jeep	466			Liberty		2002
Jeep	457			Liberty (Mexican market)		2004
Jeep	217			Wrangler		1993
Jeep	255			Wrangler		1995
Jeep	341			Wrangler		1998
Kawasaki (MC)	233			EL250		1992–1994
Kawasaki (MC)	190			KZ550B		1982
Kawasaki (MC)	182			ZX1000–B1		1988
Kawasaki (MC)	222			ZX400		1987–1997
Kawasaki (MC)	312			ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999
Kawasaki (MC)	288			ZX600		1985–1998
Kawasaki (MC)	247			ZZR1100		1993–1998
Ken-Mex	187			T800		1990–1996
Kenworth	115			T800		1992
KTM (MC)	363			Duke II		1995–2000
Lamborghini	416			Diablo (except 1997 Coupe)		1996–1997
Lamborghini			26	Diablo Coupe		1997
Lamborghini	458			Gallardo (Manuf 1/1/04–12/31/04)		2004
Land Rover	212			Defender 110		1993
Land Rover	432			Defender 90 (manufactured before 9/1/1997) VIN "SALDV224*VA" or "SALDV324*VA".		1997
Land Rover	338			Discovery		1994–1998
Land Rover	437			Discovery (II)		2000
Lexus	293			GS300		1993–1996
Lexus	460			GS300		1998
Lexus	307			RX300		1998–1999
Lexus	225			SC300		1991–1996
Lexus	225			SC400		1991–1996
Lincoln	144			Mark VII		1992
Magni (MC)	264			Australia, Sfida		1996–1999
Maserati	155			Bi-Turbo		1985
Mazda	413			MPV		2000
Mazda	184			MX–5 Miata		1990–1993
Mazda		42		RX–7		1980–1981
Mazda	199			RX–7		1986
Mazda	279			RX–7		1987–1995
Mazda	351			Xedos 9		1995–2000
Mercedes Benz		54		190	201.022	1984
Mercedes Benz		54		190 D	201.126	1984–1989
Mercedes Benz		54		190 D (2.2)	201.122	1984–1989
Mercedes Benz		54		190 E	201.024	1983
Mercedes Benz		54		190 E	201.034	1984–1985
Mercedes Benz		54		190 E	201.029	1986
Mercedes Benz		54		190 E	201.028	1986–1989
Mercedes Benz	22			190 E	201.024	1990
Mercedes Benz	45			190 E	201.024	1991
Mercedes Benz	71			190 E	201.028	1992
Mercedes Benz	126			190 E	201.018	1992
Mercedes Benz	454			190 E		1993
Mercedes Benz		54		190 E (2.3)	201.024	1984–1989
Mercedes Benz		54		190 E (2.6)	201.029	1987–1989
Mercedes Benz		54		190 E (2.6) 16	201.034	1986–1989
Mercedes Benz		52		200	123.020	1980
Mercedes Benz		52		200	123.220	1980–1985
Mercedes Benz		55		200	124.020	1985
Mercedes Benz		52		200 D	123.120	1980–1982
Mercedes Benz	17			200 D	124.120	1986
Mercedes Benz	11			200 E	124.021	1989
Mercedes Benz	109			200 E	124.012	1991
Mercedes Benz	75			200 E	124.019	1993

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	3			200 TE	124.081	1989
Mercedes Benz	168			220 E		1993
Mercedes Benz	167			220 TE Station Wagon		1993–1996
Mercedes Benz		52		230	123.023	1980–1985
Mercedes Benz		52		230 C	123.043	1980
Mercedes Benz		52		230 CE	123.243	1980–1984
Mercedes Benz	84			230 CE	124.043	1991
Mercedes Benz	203			230 CE	123.043	1992
Mercedes Benz		52		230 E	123.223	1980–1985
Mercedes Benz		55		230 E	124.023	1985–1987
Mercedes Benz	1			230 E	124.023	1988
Mercedes Benz	20			230 E	124.023	1989
Mercedes Benz	19			230 E	124.023	1990
Mercedes Benz	74			230 E	124.023	1991
Mercedes Benz	127			230 E	124.023	1993
Mercedes Benz		52		230 T	123.083	1980–1985
Mercedes Benz		52		230 TE	123.283	1980–1985
Mercedes Benz		55		230 TE	124.083	1985
Mercedes Benz	2		230 TE	124.083	.....	1989
Mercedes Benz		52		240 D	123.123	1980–1985
Mercedes Benz		52		240 TD	123.183	1980–1985
Mercedes Benz		52		250	123.026	1980–1983
Mercedes Benz		52		250	123.026	1984–1985
Mercedes Benz	172			250 D		1992
Mercedes Benz	245			250 E		1990–1993
Mercedes Benz		55		260 E	124.026	1985
Mercedes Benz		55		260 E	124.026	1986
Mercedes Benz		55		260 E	124.026	1987–1989
Mercedes Benz	105			260 E	124.026	1992
Mercedes Benz	18			260 SE	126.020	1986
Mercedes Benz	28			260 SE	126.020	1989
Mercedes Benz		52		280	123.030	1980–1985
Mercedes Benz		51		280 C	123.050	1980
Mercedes Benz		52		280 CE	123.053	1980–1985
Mercedes Benz		52		280 E	123.033	1980–1985
Mercedes Benz	166			280 E		1993
Mercedes Benz		51		280 S	116.020	1980
Mercedes Benz		53		280 S	126.021	1980–1983
Mercedes Benz		51		280 SE	116.024	1980
Mercedes Benz		51		280 SE	116.024	1980–1988
Mercedes Benz		53		280 SE	126.022	1980–1985
Mercedes Benz		51		280 SEL	116.025	1980
Mercedes Benz		53		280 SEL	126.023	1980–1985
Mercedes Benz		44		280 SL	107.042	1980–1985
Mercedes Benz		44		280 SLC	107.022	1980–1981
Mercedes Benz		52		280 TE	123.093	1980–1985
Mercedes Benz		52		300 CD	123.150	1980–1985
Mercedes Benz		52		300 CD	123.153	1980–1985
Mercedes Benz		55		300 CE	124.050	1988–1989
Mercedes Benz	64			300 CE	124.051	1990
Mercedes Benz	83			300 CE	124.051	1991
Mercedes Benz	117			300 CE	124.050	1992
Mercedes Benz	94			300 CE	124.061	1993
Mercedes Benz		52		300 D	123.133	1980–1985
Mercedes Benz		52		300 D	123.130	1980–1985
Mercedes Benz		55		300 D	124.130	1985–1986
Mercedes Benz		55		300 D Turbo	124.133	1985
Mercedes Benz		55		300 D Turbo	124.193	1986
Mercedes Benz		55		300 D Turbo	124.193	1987–1989
Mercedes Benz		55		300 DT	124.133	1986–1989
Mercedes Benz		55		300 E	124.030	1985
Mercedes Benz		55		300 E	124.030	1986–1989
Mercedes Benz	114			300 E	124.031	1992
Mercedes Benz	192			300 E 4-Matic		1990–1993
Mercedes Benz		53		300 SD	126.120	1981–1989
Mercedes Benz		53		300 SE	126.024	1985
Mercedes Benz		53		300 SE	126.024	1986–1987
Mercedes Benz		53		300 SE	126.024	1988–1989
Mercedes Benz	68			300 SE	126.024	1990
Mercedes Benz		53		300 SEL	126.025	1986
Mercedes Benz		53		300 SEL	126.025	1987
Mercedes Benz		53		300 SEL	126.025	1988–1989

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	21			300 SEL	126.025	1990
Mercedes Benz		44		300 SL	107.041	1986–1988
Mercedes Benz		7		300 SL	107.041	1989
Mercedes Benz	54			300 SL	129.006	1992
Mercedes Benz		52		300 TD	123.190	1980–1985
Mercedes Benz		52		300 TD	123.193	1980–1985
Mercedes Benz		55		300 TE	124.090	1986–1989
Mercedes Benz	40			300 TE	124.090	1990
Mercedes Benz	193			300 TE		1992
Mercedes Benz	310			320 CE		1993
Mercedes Benz	142			320 SL		1992–1993
Mercedes Benz		51		350 SE	116.028	1980
Mercedes Benz		51		350 SEL	116.029	1980
Mercedes Benz		51		350 SEL	116.029	1980
Mercedes Benz		53		380 SE	126.032	1980–1983
Mercedes Benz		53		380 SE	126.043	1982–1989
Mercedes Benz		53		380 SE	126.032	1984–1989
Mercedes Benz		53		380 SEL	126.033	1980
Mercedes Benz		53		380 SEL	126.033	1981–1989
Mercedes Benz		44		380 SL	107.045	1980
Mercedes Benz		44		380 SL	107.045	1981–1989
Mercedes Benz		44		380 SLC	107.025	1981–1989
Mercedes Benz	296			400 SE		1992–1994
Mercedes Benz	169			420 E		1993
Mercedes Benz		53		420 SE	126.034	1985
Mercedes Benz		53		420 SE	126.034	1986
Mercedes Benz		53		420 SE	126.034	1987–1989
Mercedes Benz	230			420 SE		1990–1991
Mercedes Benz	209			420 SEC		1990
Mercedes Benz		53		420 SEL	126.035	1986–1989
Mercedes Benz	48			420 SEL	126.035	1990
Mercedes Benz		44		420 SL	107.047	1986
Mercedes Benz		51		450 SE	116.032	1980
Mercedes Benz		51		450 SEL	116.033	1980–1988
Mercedes Benz		51		450 SEL (6.9)	116.036	1980–1988
Mercedes Benz		44		450 SL	107.044	1980–1989
Mercedes Benz		44		450 SLC	107.024	1980–1989
Mercedes Benz	56			500 E	124.036	1991
Mercedes Benz		53		500 SE	126.036	1980–1986
Mercedes Benz	35			500 SE	126.036	1988
Mercedes Benz	154			500 SE		1990
Mercedes Benz	26			500 SE	140.050	1991
Mercedes Benz		53		500 SEC	126.044	1981
Mercedes Benz		53		500 SEC	126.044	1982–1983
Mercedes Benz		53		500 SEC	126.044	1984–1989
Mercedes Benz	66			500 SEC	126.044	1990
Mercedes Benz		53		500 SEL	126.037	1980–1983
Mercedes Benz		53		500 SEL	126.037	1984–1989
Mercedes Benz	153			500 SEL		1990
Mercedes Benz	63			500 SEL	126.037	1991
Mercedes Benz		44		500 SL	107.046	1980
Mercedes Benz		44		500 SL	107.046	1981
Mercedes Benz		44		500 SL	107.046	1982
Mercedes Benz		44		500 SL	107.046	1983
Mercedes Benz		44		500 SL	107.046	1984–1985
Mercedes Benz		44		500 SL	107.046	1986–1989
Mercedes Benz	23			500 SL	129.066	1989
Mercedes Benz	33			500 SL	126.066	1991
Mercedes Benz	60			500 SL	129.006	1992
Mercedes Benz		44		500 SLC	107.026	1980–1981
Mercedes Benz		53		560 SEC	126.045	1986–1989
Mercedes Benz	141			560 SEC	126.045	1990
Mercedes Benz	333			560 SEC		1991
Mercedes Benz		53		560 SEL	126.039	1986–1989
Mercedes Benz	89			560 SEL	126.039	1990
Mercedes Benz	469			560 SEL	140	1991
Mercedes Benz		44		560 SL	107.048	1986–1989
Mercedes Benz		43		600	100.012	1980–1981
Mercedes Benz		43		600 Landaulet	100.015	1980–1981
Mercedes Benz		43		600 Long 4dr	100.014	1980–1981
Mercedes Benz		43		600 Long 6dr	100.016	1980–1981
Mercedes Benz	185			600 SEC Coupe		1993

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	271			600 SEL	140.057	1993–1998
Mercedes Benz	121			600 SL	129.076	1992
Mercedes Benz		77		All other passenger car models except Model ID 114 and 115 with sales designations ''long,'' ''station wagon,'' or ''ambulance''.		1980–1989
Mercedes Benz	441			C 320	203	2001–2002
Mercedes Benz	331			C Class		1994–1999
Mercedes Benz	456			C Class	203	2000–2001
Mercedes Benz	277			CL 500		1998
Mercedes Benz	370			CL 500		1999–2001
Mercedes Benz	370			CL 600		1999–2001
Mercedes Benz	357			CLK 320		1998
Mercedes Benz	380			CLK Class		1999–2001
Mercedes Benz	207			E 200		1994
Mercedes Benz	278			E 200		1995–1998
Mercedes Benz	168			E 220		1994–1996
Mercedes Benz	245			E 250		1994–1995
Mercedes Benz	166			E 280		1994–1996
Mercedes Benz	240			E 320		1994–1998
Mercedes Benz	418			E 320	211	2002–2003
Mercedes Benz	318			E 320 Station Wagon		1994–1999
Mercedes Benz	169			E 420		1994–1996
Mercedes Benz	163			E 500		1994
Mercedes Benz	304			E 500		1995–1997
Mercedes Benz	401			E Class	W210	1996–2002
Mercedes Benz	429			E Class	211	2003–2004
Mercedes Benz	354			E Series		1991–1995
Mercedes Benz			11	G-Wagon	463	1996
Mercedes Benz			15	G-Wagon	463	1997
Mercedes Benz			16	G-Wagon	463	1998
Mercedes Benz			18	G-Wagon	463	1999–2000
Mercedes Benz			5	G-Wagon 300	463.228	1990–1992
Mercedes Benz			3	G-Wagon 300	463.228	1993
Mercedes Benz			5	G-Wagon 300	463.228	1994
Mercedes Benz			6	G-Wagon 320 LWB	463	1995
Mercedes Benz			21	G-Wagon 5 DR LWB	463	2001
Mercedes Benz	392			G-Wagon 5 DR LWB	463	2002
Mercedes Benz			13	G-Wagon LWB V–8	463	1992–1996
Mercedes Benz			14	G-Wagon SWB	463	1990–1996
Mercedes Benz			28	G-Wagon SWB	463	2004
Mercedes Benz			25	G-Wagon SWB Cabriolet & 3DR	463	2001–2003
Mercedes Benz			31	G-Wagon SWB	463	2005
Mercedes Benz	85			S 280	140.028	1994
Mercedes Benz	236			S 320		1994–1998
Mercedes Benz	267			S 420		1994–1997
Mercedes Benz	235			S 500		1994–1997
Mercedes Benz	371			S 500		2000–2001
Mercedes Benz	297			S 600		1995–1999
Mercedes Benz	371			S 600		2000–2001
Mercedes Benz	185			S 600 Coupe		1994
Mercedes Benz	214			S 600L		1994
Mercedes Benz	423			S Class	140	1991–1994
Mercedes Benz	395			S Class		1993
Mercedes Benz	342			S Class		1995–1998
Mercedes Benz	325			S Class		1998–1999
Mercedes Benz	387			S Class	W220	1999–2002
Mercedes Benz	442			S Class	220	2002–2004
Mercedes Benz	343			SE Class		1992–1994
Mercedes Benz	343			SEL Class	140	1992–1994
Mercedes Benz	329			SL Class		1993–1996
Mercedes Benz	386			SL Class	W129	1997–2000
Mercedes Benz			19	SL Class	R230	2001–2002
Mercedes Benz	470			SL Class (European Market)	230	2003–2005
Mercedes Benz	257			SLK		1997–1998
Mercedes Benz	381			SLK		2000–2001
Mercedes Benz (truck)	468			Sprinter		2001–2005
Mitsubishi	13			Galant Super Salon		1989
Mitsubishi	8			Galant VX		1988
Mitsubishi	170			Pajero		1984
Moto Guzzi (MC)	403			California EV		2002
Moto Guzzi (MC)	118			Daytona		1993
Moto Guzzi (MC)	264			Daytona RS		1996–1999

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
MV Agusta (MC)	420			F4		2000
Nissan	162			240SX		1988
Nissan	198			300ZX		1984
Nissan			17	GTS, GTR (RHD)		1990–1999
Nissan	138			Maxima		1989
Nissan	316			Pathfinder		1987–1995
Nissan	412			Pathfinder		2002
Nissan	139			Stanza		1987
Nissan		75		Z, 280Z		1980–1981
Peugeot	65			405		1989
Plymouth	353			Voyager		1996
Pontiac (MPV)	189			Trans Sport		1993
Porsche	346			911		1997–2000
Porsche	439			911 (996) Carrera		2002–2004
Porsche	438			911 (996) GT3		2004
Porsche	29			911 C4		1990
Porsche		56		911 Cabriolet		1984–1989
Porsche		56		911 Carrera		1980–1989
Porsche	165			911 Carrera		1993
Porsche	103			911 Carrera		1994
Porsche	165			911 Carrera		1995–1996
Porsche	52			911 Carrera 2 & Carrera 4		1992
Porsche		56		911 Coupe		1980–1989
Porsche		56		911 Targa		1980–1989
Porsche		56		911 Turbo		1980–1989
Porsche	125			911 Turbo		1992
Porsche	347			911 Turbo		2001
Porsche		59		924 Coupe		1980–1989
Porsche		59		924 S		1987–1989
Porsche		59		924 Turbo Coupe		1980–1989
Porsche	266			928		1991–1996
Porsche	272			928		1993–1998
Porsche		60		928 Coupe		1980–1989
Porsche		60		928 GT		1980–1989
Porsche		60		928 S Coupe		1983–1989
Porsche		60		928 S4		1980–1989
Porsche	210			928 S4		1990
Porsche		61		944		1982–1983
Porsche		61		944 Coupe		1984–1989
Porsche	97			944 S Cabriolet		1990
Porsche		61		944 S Coupe		1987–1989
Porsche	152			944 S2 (2-door Hatchback)		1990
Porsche		61		944 Turbo Coupe		1985–1989
Porsche	116			946 Turbo		1994
Porsche		79		All other passenger car models except Model 959		1980–1989
Porsche	390			Boxster		1997–2001
Porsche	390			Boxster (manufactured before 9/1/2002)		2002
Porsche	463			Carrera GT		2004–2005
Porsche	464			Cayenne		2003–2004
Porsche			20	GT2		2001
Porsche	388			GT2		2002
Rolls Royce	340			Bentley		1987–1989
Rolls Royce	186			Bentley Brooklands		1993
Rolls Royce	258			Bentley Continental R		1990–1993
Rolls Royce	53			Bentley Turbo		1986
Rolls Royce	291			Bentley Turbo R		1992–1993
Rolls Royce	243			Bentley Turbo R		1995
Rolls Royce	122			Camargue		1984–1985
Rolls Royce	339			Corniche		1980–1985
Rolls Royce	455			Phantom		2004
Rolls Royce	188			Silver Spur		1984
Saab	426			9.3		2003
Saab	158			900		1983
Saab	270			900 S		1987–1989
Saab	219			900 SE		1990–1994
Saab	213			900 SE		1995
Saab	219			900 SE		1996–1997
Saab	59			9000		1988
Saab	334			9000		1994
Smart Car			27	City-Coupe, City-Coupe Glass Top, & Cabrio		2002–2004
Smart Car			30	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2005

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Sprite (trailer)			12	Musketeer		1980
Suzuki (MC)	111			GS 850		1985
Suzuki (MC)	287			GSF 750		1996–1998
Suzuki (MC)	208			GSX 750		1983
Suzuki (MC)	227			GSX-R 1100		1986–1997
Suzuki (MC)	275			GSX-R 750		1986–1998
Suzuki (MC)	417			GSX-R 750		1999–2003
Toyota	449			4-Runner		1998
Toyota	308			Avalon		1995–1998
Toyota		63		Camry		1987–1988
Toyota	39			Camry		1989
Toyota		64		Celica		1987–1988
Toyota		65		Corolla		1987–1988
Toyota	320			Land Cruiser		1980
Toyota	252			Land Cruiser		1981–1988
Toyota	101			Land Cruiser		1989
Toyota	218			Land Cruiser		1990–1996
Toyota	324			MR2		1990–1991
Toyota	326			Previa		1991–1992
Toyota	302			Previa		1993–1997
Toyota	328			RAV4		1996
Toyota	200			Van		1987–1988
Triumph (MC)	311			Thunderbird		1995–1999
Triumph (MC)	409			TSS		1982
Vespa (MC)	378			ET2, ET4		2001–2002
Volkswagen	306			Eurovan		1993–1994
Volkswagen	159			Golf		1987
Volkswagen	80			Golf		1988
Volkswagen	92			Golf III		1993
Volkswagen	73			Golf Rallye		1988
Volkswagen	467			Golf Rallye		1989
Volkswagen	149			GTI (Canadian)		1991
Volkswagen	274			Jetta		1994–1996
Volkswagen	148			Passat 4-door Sedan		1992
Volkswagen	42			Scirocco		1986
Volkswagen	427			Transporter		1980
Volkswagen	284			Transporter		1988–1989
Volkswagen	251			Transporter		1990
Volvo	43			262C		1981
Volvo	137			740 GL		1992
Volvo	87			740 Sedan		1988
Volvo	286			850 Turbo		1995–1998
Volvo	137			940 GL		1992
Volvo	95			940 GL		1993
Volvo	132			945 GL		1994
Volvo	176			960 Sedan & Wagon		1994
Volvo	434			C70		2000
Volvo	335			S70		1998–2000
Yamaha (MC)	113			FJ1200 (4 CR)		1991
Yamaha (MC)		23		FJR 1300		2002
Yamaha (MC)	360			R1		2000
Yamaha (MC)	171			RD–350		1983
Yamaha (MC)	301			Virago		1990–1998

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–19528 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 70, No. 189
Friday, September 30, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–113–2]

Citrus From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. Based on the evidence in a recent pest risk analysis, we believe these articles can be safely imported from Peru, provided certain conditions are met. This action would provide for the importation of citrus from Peru into the United States while continuing to protect the United States against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before November 29, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–113–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–113–2.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests. The Government of Peru has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow the importation into the United States of grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos.

To evaluate the risks associated with the importation of citrus from Peru, we prepared a draft pest risk analysis entitled ''Importation of Fresh Commercial Citrus Fruit: Grapefruit (*Citrus* x *paradisi* Macfad.); Lime (*C. aurantiifolia* [Christm.] Swingle); Mandarin Orange or Tangerine (*C. reticulata* Blanco); Sweet Orange (*C. sinensis* [L.] Osbeck); Tangelo (*C.* x *tangelo* J.W. Ingram & H.E. Moore) from Peru into the United States'' (October 2003).

On January 12, 2004, we published a notice in the **Federal Register** (69 FR 1694–1695, Docket No. 03–113–1) in which we advised the public of the availability of the draft pest risk analysis. We solicited comments concerning those documents for 60 days ending March 12, 2004, and received 14 comments by that date. The comments were from Members of Congress, foreign importers, foreign citrus producers, foreign and domestic exporters and distributors, State departments of agriculture, and an agricultural trade service. The majority of the commenters agreed with the conclusions in the risk analysis and supported amending the regulations to allow commercial imports of citrus from Peru into the United States. Two of these commenters requested clarification on specific issues, while two other commenters opposed allowing commercial citrus imports from Peru into the United States. These comments are discussed below by topic.

Fruit Fly Trapping and Surveys

Two commenters stated that our proposed rule should specify acceptable fruit fly population limits (flies/trap/day) in the registered citrus groves and how producers would respond if fruit fly populations exceed this limit. One of the commenters asked that we also include the levels of pest interceptions which would trigger rejection of fruit in packing facilities and noted that the pest risk analysis states only that these levels are determined by agreement. The commenter argued that we maintain these types of standards for other countries that export fruit to the United States.

Under Peru's national fruit fly program, production sites are required to maintain prevalence levels of less than 0.01 flies per trap per day for all citrus species, except key limes. Production sites that exceed this level are removed from the program for the season and have to undergo immediate actions to control pests, which may include the use of bait sprays and the imposition of quarantines on production places and buffer areas. With regard to key limes, if just one larva is found in fruit in the production site, Peru prohibits shipments from the site for the remainder of the season and executes immediate pest control measures. Fruit is only allowed in packinghouses from

production places that are participating in the program. If fruit fly larvae are detected in a packinghouse, appropriate quarantine measures are immediately applied. We are confident that Peru's national fruit fly control program will continue to apply and enforce measures that ensure production sites maintain low prevalence levels. Because the Peruvian national fruit fly program is well established and operating in accordance with clearly defined criteria that APHIS considers to be effective, we believe it would be appropriate to simply require producer participation in the program without including in the regulations the specific information suggested by the commenters. The proposed regulations would provide that Peru's fruit fly program must be approved by APHIS, which would allow for APHIS to discontinue imports of Peruvian citrus if we determine that the program is no longer effective at mitigating the risk of introducing pests of concern into the United States.

One commenter noted that the risk analysis makes no mention of safeguards to ensure that potentially infected materials are kept out of approved growing areas in Peru. The commenter stated that it was unclear as to whether surveys to verify freedom from targeted diseases would be ongoing in approved growing areas and requested that this be specifically stated in the proposed risk mitigation measures.

As stated in our pest risk analysis, Peru was declared free of citrus canker (*Xanthomonas aconopodis*), sweet orange scab (*Elsino australis*), and citrus black spot (*Guignardia citricarpa*), diseases of quarantine significance to the United States, after 3 years of negative survey results from 1996–2000. After 2000, the focus of the disease surveys shifted from establishing the absence of citrus canker, sweet orange scab, and citrus black spot to monitoring Peru's freedom from the diseases. The pest risk analysis states that disease surveys are conducted year-round and monthly reports are provided to APHIS. The results of the surveys from 1996 to 2002 are summarized in the pest risk analysis. We consider all of Peru, not just the approved growing areas, to be free of citrus canker, sweet orange scab, and citrus black spot. To prevent the introduction of the citrus canker, sweet orange scab, and citrus black spot, Peru restricts citrus imports from countries where those diseases are known to occur.

Port of Entry Inspection

One commenter took issue with the following statement in the pest risk analysis: ''Standard port of entry inspection to which all commodities are subjected can be expected to assure that sufficient phytosanitary security has been provided regarding this pest [*i.e.*, *Ecdytolopha aurantiana*].'' The commenter stated that the standard inspection we refer to no longer exists with the assimilation of agricultural inspection into the Department of Homeland Security (DHS). The commenter stated that there was a need to develop a better means to characterize and assess the ability of port of entry inspection to provide effective risk management. A second commenter also stated that inspection at the port of entry was inadequate because many shipments are not inspected thoroughly or inspected at all, due to the level of funding for this program.

We disagree with the commenters' contention that the quality of port inspections has suffered because they are now carried out by DHS. While DHS conducts a majority of inspections of agricultural commodities at the ports of first arrival, inspectors follow established and effective APHIS protocols regarding inspection rates and procedures. APHIS continues to work with DHS to ensure that the United States is protected against pests of concern that may be associated with agricultural imports.

One commenter stated that larvae in citrus are difficult to detect, therefore, larvae would most likely not be found until the fruit had already entered into commerce. The commenter added that disease symptoms are not expressed until a plant or fruit nears maturity and that some diseases may not be detected in visual surveys.

Under this proposed rule, citrus fruit from Peru would have to originate in production sites participating in Peru's national fruit fly program, be inspected prior to export, cold treated for fruit flies while en route to the United States, and inspected at the port of entry. Inspection at the port of entry would include fruit cutting, which is required by the regulations in § 319.56–2d(b)(8) for each shipment of fruit cold treated for Medfly in order to monitor treatment effectiveness. Our experience with fruit cutting for clementines from Spain, as well as other cold treated fruit, has shown fruit cutting to be a very effective means of monitoring the effectiveness of cold treatment. As stated previously, Peru is considered to be free of the diseases of concern that were considered in the risk analysis-citrus canker, citrus black spot, and sweet orange scab. Peru's disease surveillance program, which monitors the country's growing areas for these diseases, has been in effect since 1996 and will be ongoing. With this program in place, we are confident that the detection of a disease outbreak would occur early, thus, precluding the introduction of diseases of concern into the United States.

General Comments

One commenter stated that registering groves was an inadequate mitigation measure because it was too difficult to monitor and enforce and because commingling of fruit from neighboring groves or adjacent areas was commonplace.

If grove registration was to be the only mitigating measure employed, we could understand the commenter's misgivings. However, grove registration is only one of the mitigating measures that would be in place. Requiring groves to register with Peru's national plant protection organization (NPPO), the Servicio Nacional de Sanidad Agraria (SENASA), and participate in the national fruit fly program would allow SENASA and APHIS to monitor the pest situation in production sites which intend to ship to the United States and allow for an easy way to trace problems with a particular shipment. It would also ensure that citrus packers understand and follow specific safeguards when growing, harvesting, and packing fruit. We have no evidence to suggest that the commingling of fruit described by the commenter occurs in registered production sites.

Another commenter stated that we should not rely on cold treatment alone, citing the interception of the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) in Spanish clementines in 2002/2003 as an example. The commenter took issue with the section of the pest risk analysis which examined historical performances of existing programs, stating that the analysis ignores the circumstances by which it became necessary to suspend the Spanish clementine program in the first place.

The efficacy of cold treatment is scientifically based and would mitigate the risk of pest introduction. As a general rule, APHIS has required treatments for fruit flies to provide probit 9 mortality in cases where treatment is the only mitigation measure applied against the pest of concern. Probit 9 refers to a level or percentage of mortality of target pests (*i.e.*, 99.9968 percent mortality or 32 survivors out of a million) caused by a control measure. This is because the level of mortality represented by this benchmark is considered extremely high and

stringent, especially when the field infestation rates are low.[1] Under this proposed rule, we would require a treatment schedule that we are confident will provide a level of quarantine security that is equivalent to probit 9, but we would also require that fruit be consistently at low rates of infestation by fruit flies in order to ensure that there is a very low probability that fruit flies could survive cold treatment and become established in the United States. Maintaining fruit fly traps and trapping records is a component of Peru's fruit fly program and would ensure that fruit fly prevalence levels remain low at participating groves.

One commenter stated that the pest risk analysis does not address all pests or all possible negative consequences that may occur as a result of introducing Peruvian citrus to moderate climates where pests may become established. The commenter stated that because we geographically isolate areas in Peru where citrus may be exported, then we should also prohibit Peruvian citrus from entering areas in California where pests are more likely to become established.

We identified all pests known to be associated with Peruvian citrus. Using available literature and pest interception records, we established which pests would most likely follow the pathway. Our risk analysis examined the likelihood of each pest becoming established in various parts of the United States based on the number and availability of suitable hosts and climates. This information was one component used to determine the overall pest risk potential and necessary mitigation measures. We believe that our proposed measures would effectively mitigate the risk of pest introduction into all areas of the United States. Further, we would only allow citrus exports from certain areas in Peru because those areas are part of the country's ongoing fruit fly and disease surveillance programs.

One commenter stated that growers in Peru use spray treatments for citrus pests extensively, indicating a heavy reliance on chemicals. The commenter contended that this could in turn lead to the development of strains of pests that are resistant to certain chemicals.

[1] A detailed consideration of the shortcomings associated with any measure that uses a fixed expression of proportion of mortality (such as probit 9) may be found in: Landolt, P., D. Chambers, and V. Chew. 1984. ''Alternative to the use of prohit 9 mortality as a criterion for quarantine treatments of fruit fly infested fruit.'' *J. Econ. Entomol.* 77(2): 285–287.

The risk analysis examined the use of pesticides for commercial citrus in Peru and concluded that the materials used are consistent with citrus pest control recommendations in the United States. With the exception of Medfly, none of the pests targeted in the typical spray schedule (see table 3 in the pest risk analysis) are pests of quarantine significance likely to follow the pathway of imported fruit.

One commenter stated that having the rule apply only to commercial shipments appears to assume that there are fewer risks associated with these types of shipments. The commenter stated that commercial shipments actually increase the risk of pest introduction due to the large volumes of material being imported and the subsequent rapid distribution of the product throughout the United States and cited several examples including Medfly larvae in clementines from Spain (2002–2003) and *Anastrepha* spp. larvae in tangerines from Mexico (October 2003).

Our experience indicates that there is actually a lower risk of pest introduction associated with commercial shipments of fruit. Commercial shipments are produced under more controlled conditions and are subject to some form of treatment and/or other mitigation measures as a condition of entry. Fruit that undergoes such measures is less likely to be a vehicle for plant pests than fruit carried into the United States by passengers, which is not subject to such mitigation procedures.

Risk Analysis

We have not made any changes to the pest risk analysis in response to these comments. The pest risk analysis may be viewed on the EDOCKET Web site or in our reading room (Instructions for accessing EDOCKET and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this document). You may also request copies of those documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Based on the evidence in the pest risk analysis, we believe that grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos can be safely imported from certain geographic locations in Peru, provided certain conditions are met. Therefore, we are proposing to add a new § 319.56–2nn to the regulations to provide for the importation of commercial shipments of citrus from Peru. This proposed new section is explained in detail below.

Permit

Under paragraph (a) of the proposed regulations, a specific written permit issued in accordance with § 319.56–3 would be required to import grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos from Peru. Importers would be required to apply to the Plant Protection and Quarantine (PPQ) program for a permit in advance of the proposed shipments, stating in the application the country or locality of origin of the fruits, the port of first arrival, and the name and address of the importer in the United States to whom the permit should be sent. Upon receipt of the application and upon approval by an inspector, a permit would be issued specifying the conditions of entry, which will be discussed in the following paragraphs, and the port of entry. In accordance with § 319.56–4, a permit, once issued, could be amended or withdrawn by the Administrator at any time if it is determined that the importation of the fruit presents an unacceptable risk of introducing quarantine pests into the United States.

Commercial Shipments

Under paragraph (b) of the proposed regulations, we would specify that only commercial shipments of citrus would be eligible for importation into the United States. Commercial shipments of citrus fruit exported from Peru already follow specific post-harvest procedures which include dipping in a chlorine bath, running through roller brushes, treating with a fungicide, waxing, drying with hot air, visually inspecting 100 percent of the fruit to determine which are export quality, and packing by hand. We believe that with such practices in place, in addition to the following phytosanitary measures, the risk of pest introduction into the United States would be mitigated.

Approved Growing Areas

Under paragraph (c) of the proposed regulations, we would require that imported fruit originate in one of the following approved citrus-producing zones: Zone I, Piura; Zone II, Lambayeque; Zone III, Lima; Zone IV, Ica; and Zone V, Junin. Zones I through IV currently produce citrus and Peru has identified Zone V as a potential location for citrus production. This proposed limitation on the origin of the fruit would ensure that the fruit was produced in areas where citrus disease surveys and fruit fly monitoring occur.

Approved Production Sites

Under paragraph (d) of the proposed regulations, all citrus production sites would have to be approved by and

registered with SENASA. Registered sites would be required to participate in Peru's national program for fruit fly control, which includes trapping, sampling, and other integrated pest management activities.

Fruit Fly Monitoring

Paragraph (e) of the proposed regulations would provide that Peru's fruit fly management program must be approved by APHIS and must require that citrus producers allow APHIS inspectors access to all production areas in order to monitor compliance with the program. All areas where citrus is produced for export to the United States would have to be monitored for fruit flies beginning 6 weeks prior to the harvest season at a rate mutually agreed upon by APHIS and the NPPO of Peru. If fruit fly trapping levels exceed the thresholds established by APHIS and the NPPO of Peru, we would suspend exports from that production site until APHIS and the NPPO of Peru conclude that fruit fly populations have been reduced to an acceptable level. Fruit fly traps are monitored and serviced weekly, thus reinstatement to the program would be evaluated on a weekly basis. We would require that the NPPO of Peru or its designated representative keep records that document the fruit fly trapping and control activities in areas that produce citrus for export to the United States. We would also require that the NPPO of Peru maintain records of fruit fly trapping and control and make these records available to APHIS upon request. In addition, fruit fly trapping records are available on SENASA's Web site, which can be accessed by APHIS at any time.

Treatment

To address the risk presented by the fruit flies *Anastrepha fraterculus, A. obliqua, A. serpentina,* and Medfly, paragraph (f) of the proposed regulations would require that all fruit be cold treated in accordance with the following schedule, which is listed in the regulations in 7 CFR part 305 as T107–a–1, or irradiated in accordance with part 305. The following treatment schedule is approved for *Anastrepha* spp. and Medfly.

Temperature	Exposure period
34 °F (1.11 °C) or below	15
35 °F (1.67 °C) or below	17

Phytosanitary Inspection

The remaining pest of concern is *Ecdytolopha aurantiana,* a pest more commonly known as the citrus fruit borer. To address the risk presented by this pest, paragraph (g) of the proposed regulations would require that consignments be inspected prior to export and accompanied by a phytosanitary certificate with an additional declaration stating that the consignment has been inspected and found free of *E. aurantiana.*

We believe that inspection and a phytosanitary certificate would effectively mitigate the risk of introducing *E. aurantiana* because evidence suggests that the adults do not travel long distances, decreasing the likelihood of their coming into contact with suitable hosts. In addition, *E. aurantiana* is easy to detect in visual inspections.

Fruit Cutting

As noted previously, § 319.56–2d(b)(8) of the regulations provides that at the port of first arrival, an inspector will sample and cut fruit from each shipment that has been cold treated for Medfly to monitor treatment effectiveness. Because citrus from Peru would be cold treated for Medfly as a condition of entry, the port of entry inspection would include fruit cutting. Therefore, under paragraph (h) of the proposed regulations, we would require that fruit be inspected, sampled, and cut to monitor for treatment effectiveness at the port of first arrival in accordance with § 319.56–2d(b)(8). If a single live fruit fly in any stage of development or a single *E. aurantiana* is found, the shipment would be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the prescribed cold treatment does not appear to be effective against fruit flies, APHIS may suspend the importation of fruit from the originating country and conduct an investigation into the cause of the deficiency.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the fruits and vegetables regulations to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. Based on the evidence in a recent pest risk analysis, we believe these articles can be safely imported from Peru, provided certain conditions are met. This action would provide for the importation of citrus from Peru into the United States while continuing to protect the United States against the introduction of plant pests.

Peru is not yet considered a major world producer of citrus, and its citrus industry is relatively small compared to neighboring countries like Brazil, Uruguay, and Argentina. Oranges account for the greatest proportion of citrus production in Peru (271 million kg), followed by lemons and limes (238 million kg), tangerines, clementines, mandarins, and satsumas (132 million kg), and grapefruit and pomelos (30.5 million kg) (see table 1). Peru exported 11.3 million kg of citrus to more than 11 countries in 2003. Five exporters in four packinghouses account for 98 percent of the total exports.

TABLE 1.—CITRUS PRODUCTION IN PERU (2000)

Crop	Area harvested (hectares)	Production (metric tons)
Oranges	23,353	270,673
Lemons and limes	23,363	238,179
Tangerine, clementine, mandarin, and satsuma	7,375	131,787
Grapefruit and pomelos	1,750	30,500

Source: World Resources Institute (2002), cited in the pest risk analysis.

The United States produced 16.4 million tons of citrus fruit in 2003–04, valued at $2.35 billion. Citrus is produced in Florida, California, Arizona, and Texas. Florida accounts for 79 percent of U.S. citrus production and

58 percent of the value of production. California accounts for 18 percent of production and 39 percent of the value of production, while Arizona and Texas together contribute 3 percent of production and 3 percent of the value of production.

Oranges represented 79 percent of the volume of individual citrus crops and 70 percent of the dollar value of domestic production in 2003–04 (table 2). Grapefruit represented 13 percent, lemons 11 percent, tangerines 5 percent, and tangelos and temples less than 1 percent of the value of production. Tangerines are produced in Florida only. Estimates for K-early citrus and limes have been discontinued since 2002–03, and are therefore not available for 2003–04. However, in 2001–02, these crops represented less than 0.1 percent of the dollar value of total citrus production in the United States. Clementines and mandarins are not produced in the United States in commercially significant quantities.

TABLE 2.—CITRUS PRODUCTION IN THE UNITED STATES: ACREAGE, PRODUCTION, UTILIZATION, AND VALUE BY CROP (2003–04)

Crop	Bearing acreage (acres)	Production (1,000 tons)	Utilization of production (1,000 tons)		Value of production ($1,000) [1]
			Fresh	Processed	
Oranges	761,400	12,930	2,179	10,751	1,645,856
Grapefruit	114,800	2,152	1,006	1,146	296,777
Lemons	59,800	798	540	258	269,753
Tangelos	8,000	45	25	20	9,871
Tangerines [2]	36,200	435	317	118	125,301
Temples	3,400	63	15	48	4,806
K-Early Citrus (2001–02) [3]	200	1	N/A	1	113
Limes (2001–02) [3]	800	7	6	1	1,732

Source: National Agricultural Statistics Service, USDA (September 2004) (*http://www.usda.gov/nass*).
[1] Packinghouse-door equivalents.
[2] Published estimates include Florida only. Estimates for 2003–04 include Fallglo, Sunburst, and Honey varieties only.
[3] Estimates for K-early citrus and limes have been discontinued since 2001–02 and are therefore not available for 2003–04.

U.S. domestic shipments peak between October and January, gradually decrease from February to June, and are at the lowest between July and September. In contrast, the shipping season for the Peruvian citrus crops proposed for import into the United States are expected to extend from February to September, which is outside the peak shipment season for domestically produced oranges. For Peruvian oranges specifically, imports into the United States are mainly expected from June to September, when domestic orange shipments are at their lowest. Thus, the importation of Peruvian citrus fruits is not expected to compete with the production and shipment of U.S. domestically produced oranges intended for fresh utilization. Instead, imports of Peruvian citrus would provide U.S. consumers and importers with access to citrus fruit during periods when supply from domestic production is low, thus, increasing the availability of fresh citrus fruit throughout the year.

U.S. imports of citrus fruits from northern hemisphere countries are also lower during this period. For example, Spain accounts for 25.5 percent of U.S. imports of citrus fruits (table 3). Citrus fruits from Spain are primarily imported into the United States from mid-September to mid-March. Thus, Peruvian shipments between February and September would increase the availability of citrus fruits during the season when supply from both domestic production and imports from northern hemisphere countries such as Spain, and other countries listed in table 3, are low. Therefore, U.S. consumers and importers would benefit and potential negative impacts on U.S. citrus producers are expected to be minimal.

In 2004, the United States imported 478.4 million kg of citrus valued at $307.2 million. The major countries from which citrus fruit were imported included Mexico, Spain, South Africa, Australia, and Chile. Lemons and limes, mandarins, and oranges were the major products imported, and accounted for 48 percent, 32 percent, and 19 percent of the value of imports, respectively.

TABLE 3.—U.S. IMPORTS OF CITRUS FRUITS (2004)

Commodity	Value (U.S. dollars in millions)	Quantity (million kg)	Major countries from which citrus is imported, and percent share of import value [1]
Lemons and limes	146.5	321.1	Mexico (88%), Chile (7.6%), Spain (2%).
Mandarins	99.0	77.3	Spain (76.2%), South Africa (12.6%), Australia (6.4%), Mexico (2.2%), Morocco (1.4%).
Oranges	58.8	65.7	South Africa (45.2%), Australia (42.8%), Mexico (9.1%), Dominican Republic (1.2%).
Grapefruit	1.6	13.8	Bahamas (68.6%), Mexico (26.0%), Canada (2.9%), Israel (2.4%).
Other citrus fruit [2]	1.3	0.6	Jamaica (68.0%), Israel (25.1%), Italy (3.7%), Vietnam (1.2%), Morocco (1.2%).
Total citrus fruits	307.2	478.4	Mexico (44.5%), Spain (25.5%), South Africa (12.9%), Australia (10.3%), and Chile (3.6%).

Source: World Trade Atlas (2005) (*http://www.gtis.com*).
[1] Only countries accounting for more than 1 percent of the value of imports are included in table 3.

[2] Includes various fresh and dried citrus fruits, such as kumquats, citrons, bergamots, and Tahitian, Persian, and other limes of the *Citrus latifolia* variety.

Peruvian exporters estimated that exports of citrus to the United States would total 5,100 metric tons (5.1 million kg) a year. Tangerines/mandarins and tangelos are expected to comprise 69 percent of these exports (table 4). The estimated volume of 5.1 million kg of U.S. citrus imports from Peru would comprise a relatively minimal amount, compared to current U.S. citrus imports of 478.4 million kg, and U.S. domestic citrus production of 16.42 billion kg.

TABLE 4.—ESTIMATED ANNUAL VOLUME OF PERUVIAN CITRUS EXPORTS TO THE UNITED STATES [1]

Commodity	Metric tons	Number of 40-foot shipping containers [2]
Tangerine/mandarin	2,000	100
Tangelo	1,500	75
Key Lime	600	30
Clementine	500	25
Washington navel orange	300	15
Grapefruit	200	10
Total	5,100	255

Sources: Carbonell Torres, 2003, and Cargo Systems, 2001, cited in the pest risk analysis.
[1] Volumes were estimated for the year 2004.
[2] A conversion factor of 20 metric tons per 40-foot shipping container is used.

Impact on Small Entities

According to the 2002 Census of Agriculture, there were 17,727 citrus farms in the United States in 2002. The U.S. Small Business Administration defines a small citrus producer as one with annual gross revenues no greater than $ 750,000. The USDA's National Agricultural Statistics Service reported that 3.8 percent of U.S. fruit and tree nut producers accounted for 95.1 percent of sales in 1982, 4.2 percent of fruit and tree nut producers accounted for 96.2 percent of sales in 1987, and 4.6 percent of fruit and tree nut producers accounted for 96.7 percent of sales in 1992. These data indicate that the majority of U.S. citrus producers are small entities.

The economic analysis suggests that Peruvian imports would not significantly compete with domestic citrus production because the imports would be shipped largely during the off-season for U.S. production of these fruits. Although the Peruvian imports are expected to overlap with some domestic orange shipments such as Valencia oranges, the volume to be imported would be expected to be a small percentage of the total U.S. orange shipments during the importing months. Thus, given the difference in marketing seasons and the relatively small volume of citrus imports from Peru, the proposed rule would not likely adversely impact domestic citrus producers, large or small.

The proposed rule would likely benefit importers of citrus fruits. The number of importers that can be classified as small is not known. However, the rule would likely benefit, rather than adversely impact, small entities in these industries, which include: Fresh fruit and vegetable wholesalers with no more than 100 employees, NAICS 422480; wholesalers and other grocery stores with annual gross revenues no greater than $23 million, NAICS 445110; warehouse clubs and superstores with annual gross revenues no greater than $23 million, NAICS 452910; and fruit and vegetable markets with gross revenues no greater than $6 million, NAICS 445230.

Consumers would also likely benefit through the increased availability of fresh citrus fruit during the months when shipments from domestic sources, and imports from Northern Hemisphere countries such as Spain, and other countries listed in table 3, are low.

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

Executive Order 12988

This proposed rule would allow grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos to be imported into the United States from Peru. If this proposed rule is adopted, State and local laws and regulations regarding grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of commercial citrus from Peru, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the EDOCKET Web site or in our reading room. (Instructions for accessing EDOCKET and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03–113–2. Please send a copy of your comments to: (1) Docket No. 03–113–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this proposed rule, we would add provisions for the importation of citrus from Peru. The proposed measures would require the production site where the fruit is grown to be registered for export with the NPPO of Peru and the producer to have signed an agreement with the NPPO of Peru whereby the producer agrees to participate in and follow the fruit fly management program established by the NPPO of Peru.

The NPPO of Peru or its designated representative would also have to keep records that document the fruit fly trapping and control activities in areas that produce citrus for export to the United States. All trapping and control records kept by the NPPO of Peru or its designated representative would have to be made available to APHIS upon request.

In addition, the proposed rule would require each shipment of fruit to be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the fruit has been inspected and found free of *Ecdytolopha aurantiana.*

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 27.7727 hours per response.

Respondents: Citrus growers/grove registrants, Peru's NPPO.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 5.5.

Estimated annual number of responses: 110.

Estimated total annual burden on respondents: 3,055 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

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

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

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

2. A new § 319.56–2nn would be added to read as follows:

§ 319.56–2nn Conditions governing the importation of citrus from Peru.

Grapefruit (*Citrus paradisi*), limes (*C. aurantiifolia*), mandarins or tangerines (*C. reticulata*), sweet oranges (*C. sinensis*), and tangelos (*Citrus tangelo*) may be imported into the United States from Peru under the following conditions:

(a) The fruit must be accompanied by a specific written permit issued in accordance with § 319.56–3.

(b) The fruit may be imported in commercial shipments only.

(c) *Approved growing areas.* The fruit must be grown in one of the following approved citrus-producing zones: Zone I, Piura; Zone II, Lambayeque; Zone III, Lima; Zone IV, Ica; and Zone V, Junin.

(d) *Grower registration and agreement.* The production site where the fruit is grown must be registered for export with the national plant protection organization (NPPO) of Peru, and the producer must have signed an agreement with the NPPO of Peru whereby the producer agrees to participate in and follow the fruit fly management program established by the NPPO of Peru.

(e) *Management program for fruit flies; monitoring.* The NPPO of Peru's fruit fly management program must be approved by APHIS, and must require that participating citrus producers allow APHIS inspectors access to production areas in order to monitor compliance with the fruit fly management program. The fruit fly management program must also provide for the following:

(1) *Trapping and control.* In areas where citrus is produced for export to the United States, traps must be placed in fruit fly host plants at least 6 weeks prior to harvest at a rate mutually agreed upon by APHIS and the NPPO of Peru. If fruit fly trapping levels at a production site exceed the thresholds established by APHIS and the NPPO of Peru, exports from that production site will be suspended until APHIS and the NPPO of Peru conclude that fruit fly population levels have been reduced to an acceptable limit. Fruit fly traps are monitored weekly; therefore, reinstatements of production sites will be evaluated on a weekly basis.

(2) *Records.* The NPPO of Peru or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce citrus for export to the United States. All trapping and control

records kept by the NPPO of Peru or its designated representative must be made available to APHIS upon request.

(f) *Cold treatment.* The fruit must be cold treated for *Anastrepha fraterculus, A. obliqua, A. serpentina,* and *Ceratitis capitata* (Mediterranean fruit fly) in accordance with part 305 of this chapter.

(g) *Phytosanitary inspection.* Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the fruit has been inspected and found free of *Ecdytolopha aurantiana.*

(h) *Port of first arrival sampling.* Citrus fruits imported from Peru are subject to inspection by an inspector at the port of first arrival into the United States in accordance with § 319.56–2d(b)(8). At the port of first arrival, an inspector will sample and cut citrus fruits from each shipment to detect pest infestation. If a single live fruit fly in any stage of development or a single *E. aurantiana* is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented.

Done in Washington, DC, this 27th day of September 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19574 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22558; Directorate Identifier 2005–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 550, S550, 560, 560XL, and 750 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Cessna Model 500, 550, S550, 560, 560XL, and 750 airplanes. This proposed AD would require installing identification sleeves on the wires for the positive and negative terminal studs of the engine and/or auxiliary power unit (APU) fire extinguishing bottles, as applicable, and re-connecting the wires to the correct terminal studs. This proposed AD results from a report of mis-wired fire extinguishing bottles. We are proposing this AD to ensure that the fire extinguishing bottles are activated in the event of an engine or APU fire, and that flammable fluids are not supplied during a fire, which could result in an unextinguished fire in the nacelle or APU.

DATES: We must receive comments on this proposed AD by November 14, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Robert D. Adamson, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–22558; Directorate Identifier 2005–NM–107–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that the auxiliary power unit (APU) fire extinguishing system was mis-wired on some Cessna Model 750 airplanes. Although the main engine fire extinguishing system on all Cessna Model 750 airplanes is wired correctly, further investigation revealed that the fire extinguishing systems on the main engines of Cessna Model 500, 550, S550, 560 airplanes, and on the main engines and APUs of Cessna Model 560XL airplanes may not be wired correctly. Therefore, all of these models may be subject to the same or similar unsafe condition found on the Cessna Model 750 APU installation. The engine and APU fire extinguishing bottles on these airplane models have positive and negative terminal studs that are the same size, so it is possible to cross-connect the wiring of the positive and negative leads. If the wiring is cross-connected and the fire extinguishing bottles are activated, the circuit breaker may trip due to the direct ground on the positive lead, and no fire extinguishing agent would be expelled. In addition, with the exception of the Model 750 APU installation, the tripped circuit breaker removes power from the fuel and hydraulic firewall shutoff valves, which are powered closed from a normally open state, and from the associated cockpit indications. As a result, flammable fluids could continue to be supplied to the area during a fire. It should be noted that the APU

installation on the Cessna Model 750 airplanes has a solenoid valve that is powered open from the normally closed state and would close to shut off fuel with the disruption of power. The circuit breaker that provides power to the extinguishing bottle differs from the circuit breaker that controls the shutoff valve that is powered on. Finally, the flightcrew would know that the fire had not been extinguished because the engine fire annunciator would stay illuminated, and the annunciators for the firewall shutoff valve may not illuminate if the valve does not close. Thus, the flightcrew would not know why the fire had not been extinguished. These conditions, if not corrected, could result in an unextinguished fire in the nacelle or APU.

Relevant Service Information

We have reviewed the Cessna service bulletins in the table below.

CESSNA SERVICE BULLETINS

For Cessna airplane model	Service bulletin	Revision	Date
500	500–26–02	Original	April 1, 2005.
550	550–26–05	Original	April 1, 2005.
S550	S550–26–02	Original	April 1, 2005.
560	560–26–01	Original	April 1, 2005.
560XL	560XL–26–02	1	December 22, 2004.
750	750–26–05	Original	November 24, 2004.

The service bulletins describe procedures for installing identification sleeves on the wires for the positive and negative terminal studs of the engine and/or APU fire extinguishing bottles; re-connecting the wires to the correct studs; testing the connection; and, for all but the Cessna Model 750 airplanes, re-connecting the wires if necessary until the connection tests correctly. For Cessna Model 500, 550, S550, and 560 airplanes, these actions are done for the engine fire extinguishing bottles only. For Cessna Model 750 airplanes, these actions are done for the APU fire extinguishing bottle only. For Cessna Model 560XL airplanes, this action is done for both the engine and the APU fire extinguishing bottles. The service bulletins also specify that operators should send a maintenance transaction report to the manufacturer. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletins.''

Differences Between the Proposed AD and the Service Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting a maintenance transaction report to the manufacturer, this proposed AD would not require that action. We do not need this information from operators.

Clarification of Service Bulletin 750–26–05

Although Cessna Service Bulletin 750–26–05 does not specify procedures for re-connecting the wires if necessary until the connection tests correctly, that action is implied in the service bulletin and would be required in this proposed AD.

Costs of Compliance

There are about 2,801 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Modification for Cessna model—	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
500, 550, S550, and 560 airplanes	3	$65	$50	$245	1,827	$447,615
560XL airplanes	4	65	100	360	331	119,160
750 airplanes	2	65	25	155	211	32,705

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2005–22558; Directorate Identifier 2005–NM–107–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 14, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Cessna Model 500, 550, S550, 560, 560XL, and 750 airplanes, certificated in any category; as identified in the service bulletins in Table 1 of this AD.

TABLE 1.—CESSNA SERVICE BULLETINS

Service bulletin	Revision	Date	Cessna model (airplanes)
500–26–02	Original	April 1, 2005	500
550–26–05	Original	April 1, 2005	550
S550–26–02	Original	April 1, 2005	S550
560–26–01	Original	April 1, 2005	560
560XL–26–02	1	December 22, 2004	560XL
750–26–05	Original	November 24, 2004	750

Unsafe Condition

(d) This AD results from a report of mis-wired fire extinguishing bottles. We are issuing this AD to ensure that the fire extinguishing bottles are activated in the event of an engine or auxiliary power unit (APU) fire, and that flammable fluids are not supplied during a fire, which could result in an unextinguished fire in the nacelle or APU.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation

(f) Within 100 flight hours or 60 days after the effective date of this AD, whichever occurs first: Install identification sleeves on the wires for the positive and negative terminal studs of the applicable fire extinguishing bottles identified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD; re-connect the wires to the correct studs; test the connection; and re-connect the wires again as applicable until the connection tests correctly. Do all actions in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 1 of this AD.

(1) For Cessna Model 500, 550, S550, and 560 airplanes: The engine fire extinguishing bottles.

(2) For Cessna Model 560XL airplanes: The engine and the APU fire extinguishing bottles.

(3) For Cessna Model 750 airplanes: The APU fire extinguishing bottle.

No Reporting Requirement

(g) Although the Accomplishment Instructions of the service bulletins identified in Table 1 of this AD describe procedures for submitting a maintenance transaction report to the manufacturer, this AD does not require that action.

Actions Accomplished in Accordance With Earlier Revision of Service Bulletin

(h) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Cessna Service Bulletin 560XL–26–02, dated November 22, 2004, are acceptable for compliance with the corresponding action in this AD.

Parts Installation

(i) After the effective date of this AD, no person may install on any airplane a fire extinguishing bottle unless identification sleeves on the wires for the positive and negative terminal studs have been installed in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on September 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19568 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22561; Directorate Identifier 2005–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This proposed AD would require doing a general visual inspection of the passenger seat track attachments to determine if the

attachment rod is installed and to check the torque value of the attachment bolts, and doing any corrective actions if necessary. This proposed AD results from the finding of missing rods, which attach the passenger seat tracks to the airplane structure to absorb loads. We are proposing this AD to detect and correct missing attachment rods, which could result in reducing the ability of the seat to withstand a hard landing or rejected takeoff and possible injury to passengers.

DATES: We must receive comments on this proposed AD by October 31, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22561; Directorate Identifier 2005–NM–136–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 airplanes. The DAC advises that the rods that attach the passenger seat tracks to the airplane structure might not have been installed during production of certain EMBRAER Model ERJ 170 airplanes. The attachment rods and adjacent web shears enable the seat to absorb loads. Missing attachment rods, if not detected and corrected, could result in reducing the ability of the seat to withstand a hard landing or rejected takeoff and possible injury to passengers.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–53–0010, dated January 12, 2005. The service bulletin describes procedures for visually inspecting the seat track attachments to determine if the attachment rod is installed and to check the torque value of the attachment bolts, and doing any corrective actions if necessary. The corrective actions include installing an attachment rod if it is missing and re-torquing any attachment bolt that is under-torqued or over-torqued. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–04–05, dated April 30, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Clarification of Inspection Terminology.''

Clarification of Inspection Terminology

The ''visual inspection'' specified in Brazilian airworthiness directive 2005–04–05 and the EMBRAER service bulletin is referred to as a ''general visual inspection'' in this proposed AD. We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 43 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $2,795, or $65 per airplane.

The proposed modification, if necessary, would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be about $860 per airplane. Based on these figures, the estimated cost of the proposed modification would be $990 per airplane, if necessary.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–22561; Directorate Identifier 2005–NM–136–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100LR, –100 STD, –100SE, and –100 SU airplanes, certificated in any category; having serial numbers 17000007 through 17000013 inclusive, 17000015, 17000016, and 17000018 through 17000043 inclusive.

Unsafe Condition

(d) This AD results from the finding of missing rods, which attach the passenger seat tracks to the airplane structure to absorb loads. We are issuing this AD to detect and correct missing attachment rods, which could result in reducing the ability of the seat to withstand a hard landing or rejected takeoff and possible injury to passengers.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Modification if Necessary

(f) Within 700 flight hours after the effective date of this AD, do a general visual inspection of the passenger seat track attachments to determine if the attachment rod is installed and to check the torque value of the attachment bolts, and do any applicable corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 170–53–0010, dated January 12, 2005. Do any applicable corrective actions before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) Brazilian airworthiness directive 2005–04–05, dated April 30, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 20, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19567 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22560; Directorate Identifier 2005–NM–061–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Airplanes Equipped With CFE Company CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dassault Model Falcon 2000 airplanes equipped with CFE Company CFE738–1–1B turbofan engines. This proposed AD would require determining the serial number of the engines installed on the airplane, inspecting any affected engine to verify that a spherical bearing is installed on the attachment fitting of the engine mount, and corrective action if necessary. This proposed AD results from a report of a missing spherical bearing on the attachment fitting of the front engine mount on an in-service airplane, and subsequent damage and abnormal fatigue of the attachment fitting. We are proposing this AD to prevent reduced structural integrity of the engine mount, which could result in possible separation of an engine from the airplane.

DATES: We must receive comments on this proposed AD by October 31, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the

instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22560; Directorate Identifier 2005–NM–061–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Dassault Model Falcon 2000 airplanes equipped with CFE Company CFE738–1–1B turbofan engines. The DGAC advises that there has been a report of a missing spherical bearing found on the attachment fitting of the front engine mount on an in-service airplane. The absence of the spherical bearing resulted in damage and abnormal fatigue of the attachment fitting. Investigation revealed that the missing spherical bearing was one intended for pickup of loads perpendicular to the engine thrust. After the engine was moved from the right-hand to the left-hand side of the airplane, the spherical bearing was found in the outer ring of the opposite side. Airplanes affected by this defect would be those on which one or both engines were moved from one side of the airplane to the other during production. This condition, if not corrected, could cause reduced structural integrity of the engine mount, which could result in possible separation of an engine from the airplane.

Relevant Service Information

Dassault has issued Service Bulletin F2000–299, dated July 23, 2004. The service bulletin describes procedures for determining the serial number of the engines installed on the airplane, performing a borescope inspection of any affected engine to verify a spherical bearing is installed on the attachment fitting of the front engine mount, and corrective action if necessary. If a spherical bearing is missing, the corrective action involves removing the engine and sending it to a CFE service center for repair. The DGAC mandated the service information and issued French airworthiness directive F–2004–128, dated August 4, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among Proposed AD, French Airworthiness Directive, and Service Bulletin.''

Differences Among Proposed AD, French Airworthiness Directive, and Service Bulletin

The French airworthiness directive and the service bulletin specify that if a spherical bearing is missing, operators should return the engine to a CFE service center for repair. This proposed AD would require you to repair those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DGAC approve would be acceptable for compliance with this proposed AD.

Although the French airworthiness directive referenced in this AD specifies to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Costs of Compliance

This proposed inspection would affect about 7 airplanes of U.S. registry. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $910, or $130 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2005–22560; Directorate Identifier 2005–NM–061–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category; equipped with CFE Company CFE738–1–1B turbofan engines.

Unsafe Condition

(d) This AD results from a report of a missing spherical bearing on the attachment fitting of the front engine mount on an in-service airplane, and subsequent damage and abnormal fatigue of the attachment fitting. We are issuing this AD to prevent reduced structural integrity of the engine mount, which could result in possible separation of an engine from the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Determine Serial Number (S/N) and Inspect If Necessary

(f) Within the applicable compliance time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD: Determine the serial number of the engines installed on the airplane, as identified in the table in paragraph 1.A., ''Effectivity,'' of Dassault Service Bulletin F2000–299, dated July 23, 2004; if any affected serial number is found on any engine, perform a borescope inspection to verify that a spherical bearing is installed on the attachment fitting of the front engine mount by doing all the applicable actions specified in the Accomplishment Instructions of the service bulletin.

(1) For airplanes with any engine having 850 total landings or less as of the effective date of this AD: Before the accumulation of 880 total landings on the engine.

(2) For airplanes with any engine having more than 850 total landings, but 1,000 total landings or less as of the effective date of this AD: Within 1 month after the effective date of this AD.

(3) For airplanes with any engine having more than 1,000 total landings as of the effective date of this AD: Within 10 landings after the effective date of this AD.

Corrective Action

(g) If any spherical bearing is found missing during the inspection required by paragraph (f) of this AD: Before further flight, repair according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

No Reporting Requirement

(h) This AD does not require submitting reporting information to the manufacturer.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) French airworthiness directive F–2004–128, issued August 4, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on September 20, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19566 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22557; Directorate Identifier 2005–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–11 and MD–11F airplanes. The existing AD currently requires replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. This proposed AD would add airplanes to the applicability of the existing AD. This proposed AD results from a report of the old reading lights being inadvertently sent to an additional ten airplanes. We are proposing this AD to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

DATES: We must receive comments on this proposed AD by November 14, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer; Cabin Safety/Mechanical and Environmental Systems Branch; ANM–150L; FAA; Los Angeles Aircraft Certification Office; 3960 Paramount Boulevard; Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–22557; Directorate Identifier 2005–NM–147–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On July 11, 2000, we issued AD 2000–14–12, amendment 39–11822 (65 FR 44672, July 19, 2000), for certain McDonnell Douglas MD–11 series airplanes. That AD requires replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. That AD resulted from reports of burning and smoldering blankets in the forward crew rest area due to a reading light fixture that came into contact with the blankets after the light was inadvertently left on. We issued that AD to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

Actions Since Existing AD Was Issued

Since we issued AD 2000–14–12, Boeing has issued McDonnell Douglas Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005. Boeing received a report that the old reading lights were inadvertently sent to an additional ten airplanes and subsequently added the airplanes to the effectivity of the service bulletin.

Relevant Service Information

We have reviewed McDonnell Douglas Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005. The service bulletin describes procedures for the replacement of the upper and lower reading lights in the forward crew rest area with a redesigned light fixture. The procedures are essentially the same as the original issue of the service bulletin (referenced as the appropriate source of service information for accomplishing the actions required by AD 2000–14–12). The service bulletin was revised to add airplanes to the effectivity. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM–MD11–25–2, Revision D, dated March 16, 2005; as an additional source of service information for accomplishment of the replacement.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2000–14–12 and would retain the requirements of the existing AD. This proposed AD would also add ten airplanes to the applicability of the existing AD.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Costs of Compliance

There are about 81 airplanes of the affected design in the worldwide fleet. The existing AD affects about 14 airplanes of U.S. registry. This proposed AD would affect an additional 10 airplanes of U.S. registry.

The actions that are required by AD 2000–14–12 and retained in this proposed AD take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts cost about $933 per airplane. Based on these figures, the estimated cost of the currently required actions is $998 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11822 (65 FR 44672, July 19, 2000) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–22557; Directorate Identifier 2005–NM–147–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 14, 2005.

Affected ADs

(b) This AD supersedes AD 2000–14–12.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, certificated in any category, as identified McDonnell Douglas Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005.

Unsafe Condition

(d) This AD results from reports of burning and smoldering blankets in the forward crew rest area due to a reading light fixture that came into contact with the blankets after the light was inadvertently left on. We are issuing this AD to prevent a possible flammable condition, which could result in smoke and fire in the forward crew rest area.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of the Requirements of AD 2000–14–12

Replacement

(f) For airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999: Within 6 months after August 23, 2000 (the effective date of AD 2000–14–12), replace the upper and lower reading lights in the forward crew rest area with a redesigned light fixture, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, dated June 9, 1999; or Revision 1, dated May 10, 2005. After the effective date of this AD, do the replacement in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A233, Revision 1, dated May 10, 2005.

Note 1: McDonnell Douglas Alert Service Bulletin MD11–25A233 refers to AIM Aviation Service Incorporated Service Bulletin AIM-MD11–25–2, Revision C, dated March 8, 1999; and Revision D, dated March 16, 2005; as additional sources of service information for replacing the upper and lower reading lights in the forward crew rest area.

New Requirements of This AD

Replacement

(g) For all airplanes except those identified in paragraph (f) of this AD: Within 6 months after the effective date of this AD, do the replacement specified in paragraph (f) of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a reading lamp, part number (P/N) 2232, and light fixture, P/N 0200500–001.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2000–14–12, amendment 39–11822, are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on September 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19565 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22403; Directorate Identifier 2005–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: The FAA is correcting a typographical error in an NPRM that was published in the **Federal Register** on September 14, 2005 (70 FR 54316). The error resulted in an incorrect Docket No. The NPRM applies to certain Bombardier Model DHC–8–400 series airplanes. The NPRM would require an inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer; a torque check of the attachment bolts in the attachment fittings of the front, middle, and rear spars; and corrective actions if necessary.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 256–7525; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: On September 6, 2005, the FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on September 14, 2005 (70 FR 54316). That NPRM proposed to require an inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer; a torque check of the attachment bolts in the attachment

fittings of the front, middle, and rear spars; and corrective actions if necessary.

As published, that NPRM specifies an incorrect Docket No. (*i.e.*, FAA–2005–20403) throughout preamble and the regulatory text of the AD. The correct Docket No. is FAA–2005–22403.

No other part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

The last date for submitting comments to the NPRM remains October 14, 2005.

§ 39.13 [Corrected]

In the **Federal Register** of September 14, 2005, on page 54318, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES of NPRM, Docket No. FAA–2005–22403, Directorate Identifier 2005–NM–144–AD is corrected to read as follows:

* * * * *

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–22403; Directorate Identifier 2005–NM–144–AD.

* * * * *

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19558 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22402; Directorate Identifier 2005–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model NA–265, NA–265–20, NA–265–30, NA–265–40, NA–265–50, NA–265–60, NA–265–65, NA–265–70, and NA–265–80 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: The FAA is correcting a typographical error in an NPRM that was published in the **Federal Register** on September 14, 2005 (70 FR 54318). The error resulted in an incorrect Docket No. The NPRM applies to certain Sabreliner Model NA–265, NA–265–20, NA–265–30, NA–265–40, NA–265–50, NA–265–60, NA–265–65, NA–265–70, and NA–265–80 series airplanes. The NPRM would require repetitive inspections for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib, and corrective actions if necessary. The NPRM also would require inspections for fuel leaks of the front and rear spars of the wing, and for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib; and related investigative and corrective actions, if necessary.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4155; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: On September 6, 2005, the FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Sabreliner Model NA–265, NA–265–20, NA–265–30, NA–265–40, NA–265–50, NA–265–60, NA–265–65, NA–265–70, and NA–265–80 series airplanes. That NPRM was published in the **Federal Register** on September 14, 2005 (70 FR 54318). That NPRM proposed to require repetitive inspections for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib, and corrective actions if necessary. That NPRM also proposed to require repetitive inspections for fuel leaks of the front and rear spars of the wing, and for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib; and related investigative and corrective actions, if necessary.

As published, that NPRM specifies an incorrect Docket No. (i.e., FAA–2005–20402) throughout preamble and the regulatory text of the AD. The correct Docket No. is FAA–2005–22402.

No other part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

The last date for submitting comments to the NPRM remains October 31, 2005.

§ 39.13 [Corrected]

In the **Federal Register** of September 14, 2005, on page 54320, in the third column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES of NPRM, Docket No. FAA–2005–22402, Directorate Identifier 2005–NM–133–AD is corrected to read as follows:

* * * * *

Sabreliner Corporation: Docket No. FAA–2005–22402; Directorate Identifier 2005–NM–133–AD.

* * * * *

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19557 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 411

RIN 0960–AF89

Amendments to the Ticket to Work and Self-Sufficiency Program

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to revise our regulations for the Ticket to Work and Self-Sufficiency Program (Ticket to Work program), authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program provides beneficiaries with disabilities expanded options for access to employment services, vocational rehabilitation services, and other support services. We are proposing to make revisions to the current rules to improve the overall effectiveness of the program in assisting beneficiaries to maximize their economic self-sufficiency through work opportunities. These revisions are based on our vision of the future direction of the Ticket to Work program, our experience using the current rules, and recommendations made by a number of commenters on the program.

DATES: To be sure your comments are considered, we must receive them by December 29, 2005.

ADDRESSEES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/erm/Rules+Open+To+Comment* or the Federal eRulemaking Portal: *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30

p.m. on regular business days. Comments are posted on our Internet site or you may also inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Greg Zwitch, SSA Regulations Officer, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, e-mail to *regulations@ssa.gov*, or telephone (410) 965–1887 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, *http://www.socialsecurity.gov.*

Note: We plan to hold a series of town meetings to obtain additional input on these proposed changes. These meetings, which will be open to the public, will be announced in the **Federal Register** in advance. To ensure your comments are considered, please provide written comments by the date mentioned in **DATES**, using the method shown in **ADDRESSEES**.

SUPPLEMENTARY INFORMATION:

Background

The Ticket to Work and Work Incentives Improvement Act of 1999

Public Law 106–170 established the Ticket to Work program on December 17, 1999. This law represented an historic milestone in that it was the first time that Congress explicitly recognized that while many people receiving disability benefits from Social Security want to work, and are able to work, they face a number of significant barriers that prevent them from reaching their goals. Congress established the Ticket to Work program to provide Social Security beneficiaries ''real choice in obtaining the services and technology that they need to find, enter, and maintain employment'' by expanding the universe of service providers.

Under the Ticket to Work program, the Commissioner of Social Security (the Commissioner) may issue a ticket to Social Security Disability Insurance (SSDI) beneficiaries and to disabled or blind Supplemental Security Income (SSI) recipients (''beneficiaries''). In this voluntary program, each beneficiary who receives a Ticket to Work has the option of using his or her ticket to obtain services from a provider known as an employment network (EN) or from a State vocational rehabilitation (VR) agency. ENs may choose to whom they provide services. When the beneficiary and an EN or State VR agency agree to work together under the program, the EN or State VR agency will provide, without charge to the beneficiary, employment services, vocational rehabilitation services, and other support services to assist the beneficiary in obtaining or regaining and ultimately maintaining self-supporting employment. If the beneficiary achieves certain work outcomes, we will pay the EN or State VR agency.

The SSDI and SSI programs serve a diverse population of individuals with disabilities. Our beneficiaries are comprised of people from various age groups with different impairments, levels of education, work experience, and capacities for working. While many cannot work at all on a sustained basis, others may be able to work part-time or full-time with reasonable accommodations and/or ongoing supports. This view is consistent with the assumptions underlying the Americans with Disabilities Act. As we develop our return to work initiatives, we are also mindful that the unique needs of every beneficiary cannot be met by one program.

On July 27th 2005, the Commissioner announced publication of a notice of proposed rule making in the **Federal Register** which set out her plan to improve our disability determination process. As part of our plans to improve this process, we intend to conduct several demonstration projects aimed at helping people who want to work do so. These projects advance the President's New Freedom Initiative and provide work incentives and opportunities earlier in the disability determination process. Thus, the Ticket to Work program, is an important part of a comprehensive SSA initiative dedicated to helping people with disabilities who want to work do so to their fullest capabilities.

The Current Ticket to Work Regulations

Public Law 106–170 directs the Commissioner to periodically review EN payment systems to ensure that they provide adequate incentives for ENs to assist beneficiaries. Based on three years of experience administering the program, we are proposing a number of revisions to our current rules. We believe that these proposed changes will significantly enhance beneficiary choice and improve the likelihood that beneficiaries will receive the most effective combination of services.

Issues Addressed in These Proposed Rules

State Participation and Beneficiary Choice

Subpart F of the current Ticket to Work rules (20 CFR 411.350–411.435) explains how State VR agencies participate in the Ticket to Work program. With respect to a beneficiary who holds a ticket, a State VR agency may elect, on a case-by-case basis, to participate in the program as an EN. If the State VR agency does so, it will be paid under an EN payment system it elects pursuant to section 1148(h) of the Social Security Act (the Act). With respect to a beneficiary that the State VR agency does not elect to serve as an EN, the State VR agency shall be paid for services provided to that beneficiary under the cost reimbursement payment system applicable under section 222(d) of the Act and section 1615(d) and (e) of the Act. Under our current rules, if the State VR agency elects to be paid for services under the cost reimbursement system, the beneficiary's ticket must be assigned to the State VR agency in order for that agency to be paid through that system. In addition, when the State VR agency is paid under the cost reimbursement system with respect to a ticket, our rules preclude any subsequent payment to an EN or a VR agency serving as an EN with respect to the same ticket. In September 2002, we clarified some of these rules in ''Transmittal 17'' to the Vocational Rehabilitation Providers Handbook (chapter 12). This transmittal added background information and procedures for State VR agencies to follow regarding the Ticket to Work program. If these proposed rules become final, we will issue new procedures to replace Transmittal 17.

We have received many comments that our current policy, which precludes further use of a ticket if VR reimbursement has been paid, is too restrictive and does not allow our beneficiaries to take advantage of the full potential of the Ticket to Work program. After considering our experience in implementing the program, we agree. In order to expand the opportunities for beneficiaries under this program, we propose to make changes to the rules in subpart F to provide that a beneficiary's ticket need not be assigned to a State VR agency in order for the VR agency to be paid under the cost reimbursement payment system. We also propose changes in subpart C to provide that, in such cases when the beneficiary is receiving services from a State VR agency that has chosen to be paid under the cost

reimbursement payment system, the beneficiary will be considered to be ''using a ticket'' as described in that subpart. This means that the beneficiary will be afforded protection from the initiation of a continuing disability review while receiving services from a State VR agency, provided that all the related provisions regarding timely progress are met.

We also propose to make a related change that would allow for payment to an EN under a Ticket to Work payment system and to a State VR agency under the cost reimbursement payment system with respect to the same beneficiary. We believe that these changes would greatly expand beneficiary choice and enable beneficiaries to take advantage of a more effective combination of services from both a VR agency and an EN. For example, the State VR agency could provide the initial, intensive rehabilitation services, and an EN could follow up by providing the ongoing support many individuals, particularly those with psychiatric and cognitive impairments, need to maintain their work efforts. We do not, however, permit a beneficiary to assign a ticket to an EN while a State VR agency is continuing to provide services.

We propose to make related changes in subparts B and F with regard to ticket assignment. We provide that a beneficiary may not assign a ticket to a State VR agency if a State VR agency has provided the beneficiary with services and received payment under the cost reimbursement system with respect to the services provided to the beneficiary. We are making this change to ensure that State VR agencies do not potentially receive payments under both payment systems for the same beneficiary, which would provide an unfair advantage over ENs.

Also in subpart F, we propose to explain the limited payment option in instances where a beneficiary is receiving services from a State VR agency before the beneficiary has a ticket. In these cases, the State VR agency will be limited to the cost reimbursement payment system.

Employment Network Payment Systems

The rules for EN payment systems are set out in subpart H of part 411 (20 CFR §§ 411.500 through 411.597). Currently § 411.597(a) states, ''We will periodically review the system of payments and their programmatic results to determine if they provide an adequate incentive for ENs to assist beneficiaries to enter the work force, while providing for appropriate economies.''

The question of whether the current Ticket to Work program provides an adequate incentive for ENs to assist beneficiaries has been studied extensively. In an evaluation of the Ticket to Work program by Mathematica Policy Research (MPR) in February 2004, MPR reports that despite aggressively marketing the Ticket to Work program to over 50,000 organizations, only about 1000 non-state providers have signed up as ENs and only a few hundred are actively participating. Over time, organizations have become more reluctant to join the Ticket to Work program as service providers. The overall number of service providers in the program remains low, with retention a major challenge. The financial viability of ENs remains uncertain as ENs report losing money on Ticket to Work operations.

Furthermore, the Ticket to Work and Work Incentives Advisory Panel (TWWIAP) and a number of witnesses testifying before the Subcommittee on Social Security of the House Committee on Ways and Means have noted that the current design of the EN payment systems (see chart I) remains a major reason for limited EN and beneficiary participation. They have stressed that it is crucial to increase payments to ENs earlier in the process, because it is more resource-intensive to assist most beneficiaries to obtain jobs.

CHART I.—CURRENT EN PAYMENT METHOD

Outcome achieved when	Percent of PCB*	SSI ticket-holder	SSDI ticket-holder
Outcome—Payment Method			
Outcome Payments:			
Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings	40	[1] $204	[1] $347
Total Outcome Payments Available (60 payments)	.....	12,240	20,820

[1] Per month.

Milestone	Must occur before the first Outcome payment month, and is achieved when the beneficiary works	Percent of PCB*	SSI ticket-holder	SSDI ticket-holder
Outcome—Milestone Payment Method				
1	1 calendar month above gross SGA	34	$173	$295
2	3 calendar months above gross SGA in a 12-month period	68	347	590
3	7 calendar months above gross SGA in a 12-month period	136	694	1,181
4	12 calendar months above gross SGA in a 15-month period	170	867	1,476
	Total of the 4 Milestone Payments Available	.....	2,081	3,542
+60 (reduced) Outcome Payments.	Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. Each Outcome Payment made to an EN is reduced by an amount equal to 1/60th of the total Milestone Payments made to that EN.	34	Depending on the number of milestones achieved, outcome payments could range from $138–$173 SSI Ticket Holder, $236–$295 SSDI Ticket Holder.	

Milestone	Must occur before the first Outcome payment month, and is achieved when the beneficiary works	Percent of PCB*	SSI ticket-holder	SSDI ticket-holder
Total Available	Added together, the 4 milestone payments plus 60 available months of reduced outcome payments, should equal about 85% of the Outcome Payment System.	.....	10,361	17,702

*The Payment Calculation base (PCB) is the national average disability benefit payable under each of the Social Security Administration's two disability programs. PCB for 2005 is based on the Social Security Administration formulas for 2004. Each December the Social Security Administration will calculate two PCBs and post them to its ''work'' Web site, *http://www.ssa.gov/work.* PCB for 2005: $868.20 for SSDI and $510.23 for SSI. *Individual payments have been rounded to the nearest whole dollar.* For further explanation of the Final Regulations for the Social Security Administration Ticket to Work Program, please visit *www.socialsecurity.gov/regulations.*

In addition, at our request, the Disability Research Institute of the University of Illinois at Urbana-Champaign convened an Advisory Group on the Adequacy of Incentives (AOI Advisory Group) in April 2003. Consistent with section 1148(h)(5)(C) of the Act, the AOI Advisory Group provided recommendations regarding the adequacy of incentives. That section requires that particular attention be paid to:, individuals with disabilities with a need for ongoing support and services; those with a need for high-cost accommodations; those who earn a subminimum wage; and those who work and receive partial cash benefits. Accordingly, we have decided to propose changes to subpart H that are intended to create a greater financial incentive for EN participation.

First, under the current outcome-milestone payment system, the current regulations provide that an EN's total potential payment is approximately 85 percent of the total that would have been potentially payable under the outcome payment system for the same beneficiary. We are proposing to increase the total potential payment under the outcome-milestone payment system to 90 percent of the total. By increasing the total potential payment, we believe that we will increase the incentive for small or undercapitalized providers to participate as ENs in the program.

Second, the AOI Advisory Group recommended a payment approach that recognizes that the steps leading to maximizing self-sufficiency are incremental and may be interrupted periodically, but over time the benefits of increasing work activity are significant. Beneficiaries face multiple barriers to employment such as: A lack of access to training and employment services, loss of ongoing employment supports, loss of employment, etc. We are proposing a three-phased payment system that parallels the steps beneficiaries take toward self-sufficiency.

Phase 1 represents the beneficiaries initial efforts at employment. Phase 1 is modeled on the Trial Work period provided for SSDI beneficiaries. Four milestones will be paid when the beneficiary works for a period of time at the trial work earnings level. Phase 1 Milestones are the only payments that will be the same for both SSI and SSDI beneficiaries, based on the higher SSDI payment calculation base. This addresses the concern that the initial phase is the most expensive for the EN to provide services and without equal payments SSI beneficiaries would have difficulty accessing Phase 1 services. The Trial Work earnings requirement ($590/mo. for 2005) represents a significant work and earnings milestone for beneficiaries as well as an attainable payment point for ENs.

Phase 2 represents a significant additional step toward self-sufficiency with increased earnings. We anticipate that some beneficiaries will progress to Phase 2, increasing work hours and earnings to above the SGA level ($830 for 2005). We propose, as the AOI Advisory Group recommended, to encourage the use of work incentives during this second phase by making payments to ENs based on gross earnings before adjustments for work incentives. We anticipate that SSI beneficiaries will take longer to complete phase 2, 18 months instead of 11 months for SSDI beneficiaries, due to lower levels of work experience prior to entering the rolls.

The final phase is the Outcome payment period where ENs will provide services to support retention of employment after the beneficiary leaves the SSA rolls. We used the SSDI extended period of eligibility (EPE) as the template for the 36 month Outcome payment period for SSDI beneficiaries. SSI beneficiaries, having less work experience and often more significant disabilities, may need a longer Outcome payment period compared to SSDI beneficiaries. Therefore, we are leaving the SSI Outcome period at 60 months. This has the additional positive effect of roughly equalizing the total Ticket payments for SSI and SSDI beneficiaries. This addresses the concern expressed by the AOI Advisory Group that total payment amounts be equalized in order to remove any financial disincentive for ENs to serve SSI beneficiaries.

Finally, our proposed rule will increase the overall percentage of the payment calculation base which is allocated for Ticket payments from 40% to 67%. Both the AOI Advisory Group and the TWWIAP expressed concerns that current funding levels are inadequate to support the consumer driven employment service model that Congress envisioned in the Ticket to Work legislation. Congress explicitly permitted the Commissioner to review and adjust the 40% funding level set in the Act. The 40% funding level proved inadequate to attract sufficient ENs to the marketplace to allow for adequate access to services and consumer choice. We believe that a combination of: (1) Increasing overall funding; (2) reducing the differential between Outcome and Outcome-Milestone payments; (3) equalizing funding between SSDI and SSI; (4) increasing Milestone payments; and (5) providing a shorter timeframe for payments to ENs serving SSDI beneficiaries will increase the incentive for small or undercapitalized providers to participate as ENs. The resulting increased EN participation will improve beneficiary access to services and quality providers. The proposed payment rates are presented in charts II through IV using the 2005 Payment Calculation base.

CHART II.—PROPOSED OUTCOME—MILESTONE PAYMENT TABLE

[2005 figures for illustration only]

Payment type	Beneficiary earnings	SSDI amount of payment	Title SSI amount of payment
Phase 1 (120% of SSDI PCB) *			
Milestone 1	$295 for two weeks work	$1,042	$1,042
Milestone 2	$590/mo. × 3 months work (cumulative)	$1,042	$1,042
Milestone 3	$590/mo. × 6 months work (cumulative)	$1,042	$1,042
Milestone 4	$590/mo. × 9 months work (cumulative)	$1,042	$1,042
Total Phase 1		$4,168	$4,168
Phase 2 (36% of PCB)	Gross Earnings>$830.		
SSDI Milestones 1–11		$313 × 11 = $3,443	
SSI Milestones 1–18			$184 × 18 = $3,312
Total Phase 1 + 2 Milestones		$7,611 *	$7,480 *
Outcome Payments (36% of PCB).			
SSDI = 1–36	>$830/and monthly cash benefit not payable	$313 × 36 = $11,268	
SSI = 1–60	Sufficient earnings for federal cash benefits = "0".		$184 × 60 = $11,040
Total milestone and outcome payments.		$18,879	$18,520

* A Lump sum milestone is the remaining total milestones unpaid if the outcome period is reached before all the milestones are achieved. This can be any number of the remaining milestones and is paid after the first outcome payment is achieved.

CHART III.—PROPOSED OUTCOME ONLY TABLE—SSDI AND CONCURRENT

[2005 figures for illustration only]

Payment type	Beneficiary earnings	SSDI amount of monthly payment	SSDI total payments
Outcome payments 1–36 (67% of PCB)	>$830.00/and monthly cash benefit not payable.	$582.00	$20,952

CHART IV.—PROPOSED OUTCOME ONLY TABLE—SSI ONLY

[2005 figures for illustration only]

Payment type	Beneficiary earnings	SSI amount of monthly payment	SSI total payments
Outcome payments 1–60 (67% of PCB)	Earnings sufficient to "0" out SSI federal cash benefit.	$342.00	$20,520

Definitions and amounts: PCB payment calculation base—average benefits payable in calendar year, each title has its own base (2005 SSDI = $868.20, SSI = $510.23)

Phase 1 Milestones = 120% of PCB *

Phase 2 milestones = 36% of PCB

Outcome payments (out-mile) = 36% of PCB

Outcome only payment = 67% of PCB

(Rounding is to the nearest dollar amount) 2005 SGA = $830, 2005 TWP = $590

* For Phase 1 Milestones ONLY, the payments are calculated for both SSI and SSDI beneficiaries using the higher SSDI Payment Calculation Base (PCB). This is intended to remove any disincentive to serve SSI beneficiaries during the initial high cost phase of services. All other payments are calculated based on a percentage of the Payment Calculation Base (PCB) for the respective program (SSI or SSDI).

Ticket Eligibility for Beneficiaries Whose Conditions May Medically Improve

The TWWIAP, in its July 26, 2001 report to the Commissioner, recommended that ''[a]ll SSI and SSDI adult disability beneficiaries, including those with a Medical Improvement Expected (MIE) designation, should be eligible to participate in the Ticket program'' and ''sixteen (16) and seventeen (17) year-old beneficiaries, including those with an MIE designation, should be eligible to participate in the Ticket program.'' The TWWIAP reiterated these recommendations in its August 2002 and May 2003 Annual Reports to Congress and to the President.

Furthermore, the Government Accountability Office (GAO) in its July 2003 report entitled ''Social Security Disability: Reviews of Beneficiaries' Disability Status Require Continued Attention to Achieve Timeliness and Cost-Effectiveness,'' observed that our ''rationale for delaying [for three years] issuance of a ticket to beneficiaries expected to medically improve, based on the premise that they will regain their capacity to return to work without SSA assistance, is not well-supported by program experience.''

We agree with most of these recommendations and have proposed changes to the ticket eligibility rules set

out under subpart B to allow beneficiaries with an MIE designation to be eligible for a ticket without first requiring a continuing disability review to be conducted.

Other Changes We Propose to Make

In subpart A, we propose to remove the rules on how we are phasing in implementation of the Ticket to Work program, because we already have implemented the program on a nationwide basis.

In subpart E, we are adding a new requirement, that an employment network report to the Program Manager each time it requests to take a ticket out of assignment.

Additional Matters for Comment

We invite comments from the public on four additional issues. The first issue is whether a beneficiary should be eligible for more than one ticket in a period of entitlement for SSDI or SSI benefits. Our current rules provide for only one ticket for each period of entitlement. Since we published our current rules, we have received a number of comments regarding this provision. These comments have noted that in order to sustain gainful employment, many beneficiaries require ongoing support services beyond the period of time over which Outcome or Outcome-Milestone payments are made. For example, beneficiaries with physical disabilities may require indefinitely specialized transportation services to get to and from the worksite, and thus would benefit from a longer period of eligibility for the Ticket to Work program.

The second issue is whether and how we should simplify the definition of ''using a ticket'' under the Ticket to Work program. Ticket-in-use status ensures that we will not initiate a medical continuing disability review (CDR). In the preamble to our current rules regarding the suspension of CDRs, we indicated that we sought to balance two important needs. First, we sought to define using a ticket in a way that minimizes the disincentive brought on by the fear of having benefits terminated upon return to work. Second, we need to maintain the integrity of the program by ensuring that beneficiaries who have medically improved do not continue to receive disability benefits for an undue length of time. Maintaining this balance remains our goal.

Because we only recently have begun, through the Program Manager, to conduct the reviews to determine if beneficiaries who have assigned their tickets are meeting the timely progress requirements, we do not have enough information on which to base any changes to our regulations. For this reason we are soliciting comments on how we might revise the timely progress requirements consistent with the intent of legislation. Currently beneficiaries with Tickets assigned must have 3 months of work activity at the SGA level in the third year their Ticket is assigned to maintain Ticket-in-use status. This requirement increases to six months in the fourth and fifth years. We specifically are interested in receiving comments on the wisdom of this work requirement in cases where the State VR agency is providing a beneficiary a secondary or post-secondary education. For example, should we modify or remove the increasing levels of work activity currently required to meet ticket ''in use'' status for beneficiaries enrolled as full-time students.

The third issue is whether the evidence requirements for EN payment are unnecessarily burdensome. The current rules require ENs to submit primary evidence of work and earnings, such as a pay stub. ENs report that they are unable to comply with our evidence requirements in certain situations where they believe themselves to be eligible for milestone or outcome payments. These situations occur when the EN cannot obtain the required documentation because the ticket user and/or the employer are unavailable and/or uncooperative, or when the available evidence does not satisfy our requirements.

The proposed accelerated outcome payment period would reduce this administrative burden for SSDI beneficiaries, because ENs would be required to obtain evidence for the shorter 36-month outcome payment period rather than the current 60 month period. We are currently considering ways to further relieve this burden. For example, we could reverse the timing of payments so that we would pay ENs based on a presumption (if other criteria are met) and do a reconciliation when the earnings information is available to SSA that might result in the EN repaying monies not due.

The fourth issue is whether there are any circumstances under which SSA should pay both Phase 1 and Phase 2 milestones to an EN for beneficiaries who assign their ticket after we have made a payment to the State VR agency under the cost reimbursement payment system. The proposed regulations provide for payment of only Phase 2 milestones in this situation. Our intent in that section was to create an incentive for EN's to partner with VR to provide ongoing support in order to maintain work at or above the SGA level. We are inviting comment on the circumstances under which paying Phase 1 milestones would increase the likelihood the beneficiary would achieve self-sufficiency, for example when the beneficiary lost their job subsequent to the VR reimbursement payment.

Issues and Recommendations Not Included in this Regulation

The Ticket to Work program is now operating in all States and territories. We will continually assess and evaluate the program to determine what additional changes are needed to enhance its effectiveness. We will continue to ensure that the Ticket to Work program is an effective component of our overall strategy for improving work opportunities for people with disabilities.

Because of the relative infancy of the program and slow growth in participation, we have been impeded in the collection of objective information on EN and beneficiary experiences. The proposal discussed in this section requires further analysis before we can make a confident determination as to its efficacy and propose additional program modifications.

Ticket Eligibility for Beneficiaries Who Are Ages 16 and 17

We also have considered recommendations regarding the current and potential effects of the Ticket to Work program on youths with disabilities. In the current regulations, we concluded that ''participation in an employment plan under the Ticket to Work program could interfere with their pursuit of an education, completion of which many believe should be the primary focus and goal for school-age youth.'' We also concluded that it would be premature to offer tickets to SSI beneficiaries who received payments prior to age 18, and who have since attained age 18 but have not undergone a redetermination of their eligibility under the adult standard.

After carefully reviewing this issue, we continue to believe that it would be inappropriate to offer tickets to these groups for the reasons previously stated. In the alternative, we have developed a youth transition strategy to help young disabled SSDI and SSI beneficiaries' transition to adulthood by maximizing their economic self-sufficiency. We plan to accomplish this goal by offering and testing a variety of new approaches to meet the needs of young beneficiaries and their families. For example, we have implemented a Youth Transition Demonstration project where six states are developing service delivery systems

to assist youth with disabilities to successfully transition from school. In addition, on June 24, 2005, we published final regulations governing the continuation of benefits when a beneficiary's impairment has medically improved (70 FR 36494). These rules continue benefits to SSI students age 18 through 21 who do not meet the adult disability standard at age 18 as long as they are participating in an individualized education program (IEP) developed under the Individuals with Disabilities Education Act (IDEA) before their disability under the SSI program ended. We believe that our youth transition strategy will provide enhanced opportunities for youth to fully participate in the workforce, without interfering with their education.

Regulatory Procedures

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866

We have consulted with the Office of Management and Budget and have determined that these proposed rules meet the criteria for an economically significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. The Office of the Chief Actuary estimates that these proposed rules, if finalized, will result in increased program outlays resulting (in millions of dollars) over the next 10 years.

Fiscal year	SSDI	SSI	Medicare	Medicaid	Total
2006	$4	$7	.....	.....	$11
2007	27	14	$7	$1	48
2008	98	8	22	4	132
2009	212	10	43	11	276
2010	266	18	62	23	369
2011	305	19	78	36	438
2012	330	37	93	47	507
2013	338	32	110	52	532
2014	331	26	126	53	536
2015	313	19	141	55	528
Totals:					
2006–10	607	57	134	38	835
2006–15	2,223	190	682	283	3,377

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would primarily affect only individuals and those entities that voluntarily enter into a contractual agreement with us. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132, ''Federalism,'' and determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Public Law 106–170 established the Ticket to Work program that will complement the existing State VR program. These proposed rules will also complement the existing State vocational rehabilitation program.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table. A 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules that are cleared through our current Ticket to Work and Self-Sufficiency Program Regulations; OMB Control Number 0960–0644.

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
411.145(a); 411.190	.....	.....	.....	1
411.325(a)	96	1	5	8
411.140(d)(3); 411.365(a); 411.385; and 411.390	.....	.....	.....	1
411.575	.....	.....	.....	1
Total	.....	.....	.....	11

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the Office of Management and

Budget at the following address/number: Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530. Fax Number: 202–395–6974.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

References

The sources we consulted while developing these proposed rules are cited in the preamble text. These references are included in the rulemaking record for these proposed rules and are available for inspection by interested individuals by making arrangements with the contact person shown in this preamble.

Vocational Rehabilitation Providers Handbook, *Transmittal 17* (available at: *http://www.ssa.gov/regulations/program-resources.htm*)

Ticket to Work and Work Incentives Advisory Panel, *Annual Report to the President and Congress: Year Three, May 2003* (available at: *http://www.ssa.gov/work/panel/panel_documents/reports.html*)

Ticket to Work and Work Incentives Advisory Panel, *Annual Report to the President and Congress: Year Two, August 2002* (available at: *http://www.ssa.gov/work/panel/panel_documents/reports.html*)

Ticket to Work and Work Incentives Advisory Panel, *Advice Report to the Commissioner of the Social Security Administration: Design Issues Related to the Adequacy of Incentives Study,* (June 18, 2002) (available at: *http://www.ssa.gov/work/panel/panel_documents/reports.html*)

Ticket to Work and Work Incentives Advisory Panel, *Advice Report to the Commissioner of the Social Security Administration on the Notice of Proposed Rulemaking for the Ticket to Work and Self Sufficiency Program* (July 26, 2001) (available at: *http://www.ssa.gov/work/panel/panel_documents/reports.html)*

Government Accountability Office, *''Social Security Disability: Reviews of Beneficiaries' Disability Status Require Continued Attention to Achieve Timeliness and Cost-Effectiveness,''* GAO–03–662 (July 24, 2003) (available at: *http://www.gao.gov/highlights/d03662high.pdf*)

Government Accountability Office, *''SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts'',* GAO–01–153 (January 12, 2001) (available at: *http://www.gao.gov/new.items/d01153.pdf*)

Disability Research Institute, Adequacy of Incentives Advisory Group, *Recommendations for Improving Implementation of the Ticket to Work and Self-Sufficiency Program (Regulatory and Administrative Changes)* (Interim Report No. 1) (September 2003) (available at: *http://www.dri.uiuc.edu/research/p03–08h/default.htm)*

Mathematica Policy Research, *Evaluation of the Ticket to Work Program; Initial Evaluation Report,* (February 2004) (available at: *http://www.mathematica-mpr.com/publications/PDFs/evalttw.pdf*)

These references are included in the rulemaking record for these proposed rules and are available for inspection by interested individuals either at the websites listed or by making arrangements with the contact person shown in this preamble.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 411

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income, Public Assistance programs, Vocational Rehabilitation.

Dated: September 26, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are proposing to amend subparts A, B, C, E, F and H of part 411 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 411—THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

1. Revise the authority citation for part 411 to read as follows:

Authority: Secs. 702(a)(5) and 1148 of the Social Security Act (42 U.S.C. 902(a)(5) and 1320b–19); Sec. 101(b)–(e), Pub. L. 106–170, 113 Stat. 1860, 1873 (42 U.S.C. 1320b–19 note).

Subpart A—[Amended]

§ 411.110 [Removed]

2. Remove § 411.110.

Subpart B—[Amended]

3. In § 411.120, revise paragraphs (b) and (c) to read as follows:

§ 411.120 What is a ticket under the Ticket to Work program?

* * * * *

(b) The left side of the ticket includes the beneficiary's name, ticket number, claim account number, and the date we issued the ticket. The ticket number is 12 characters and comprises the beneficiary's own social security number, the letters ''TW,'' and a number (1, 2, etc.) in the last position signifying that this is the first ticket, second ticket, etc., that the beneficiary has received.

(c) The right side of the ticket includes the signature of the Commissioner of Social Security and provides a description of the Ticket to Work program. The description of the program will tell you how you may offer the ticket to an EN or State VR agency. The description will also tell you how the EN provides services to you.

4. In § 411.125 remove paragraph (a)(3) and revise paragraph (a)(2)(ii)(C) to read as follows:

§ 411.125 Who is eligible to receive a ticket under the Ticket to Work program?

(a) * * *

(2) * * *

(ii) * * *

(C) Your monthly Federal cash benefits based on disability or blindness under title XVI are not suspended (see subpart M of part 416 of this chapter for our rules on suspension of title XVI benefit payments).

* * * * *

5. Revise § 411.130 to read as follows:

§ 411.130 How will we distribute tickets under the Ticket to Work program?

We will give a ticket to you if you are eligible to receive a ticket under § 411.125.

6. Revise § 411.135 to read as follows:

§ 411.135 What do I do when I receive a ticket?

Your participation in the Ticket to Work program is voluntary. When you receive your ticket, you are free to choose when and whether to assign it (see § 411.140 for information on assigning your ticket). If you want to participate in the program, you can take your ticket to any EN you choose or to your State VR agency. You may choose to assign your ticket to an EN by signing an individual work plan (see §§ 411.450 through 411.470). Alternately, you may choose to take your ticket and receive services from your State VR agency by entering into and signing an individualized plan for employment. If the State VR agency provides services to you, it will decide whether to accept your ticket. If it accepts your ticket, you will have assigned your ticket to the State VR agency and it will receive payment as an EN. If the State VR agency decides to be paid under the cost reimbursement payment system, you have not assigned your ticket and you may assign your ticket after State VR services end.

7. In § 411.140, revise paragraphs (a), (d) introductory text, (d)(3), and the first

sentence of paragraph (e) to read as follows:

§ 411.140 When can I assign my ticket and how?

(a) You may assign your ticket during a month in which you meet the requirements of § 411.125(a)(1) and (a)(2). You may also assign your ticket during the 90 day period your ticket is considered in use after State VR services end (see § 411.171(c)(2) and (d)(2)). You may assign your ticket to any EN which is serving under the program and is willing to provide you with services, or you may assign your ticket to a State VR agency acting as an EN. You may not assign your ticket to more than one provider of services (i.e., an EN or a State VR agency) at a time. You may not assign your ticket if you are receiving VR services pursuant to an individualized plan for employment and the State VR agency has chosen the cost reimbursement payment system. You also may not assign your ticket to a State VR agency if a State VR agency has provided you services and received payment under the cost reimbursement payment system with respect to the services provided to you (see § 411.585(b)).

* * * * *

(d) In order for you to assign your ticket to an EN or State VR agency acting as an EN, all the following requirements must be met:

* * * * *

(3) A representative of the EN must submit a copy of the signed IWP to the PM, or a representative of the State VR agency, acting as an EN, must submit the completed and signed form (as described in § 411.385(a) and (b)) to the PM.

* * * * *

(e) If all of the requirements in paragraph (d) of this section are met, we will consider your ticket assigned to the EN or State VR agency acting as an EN.

* * * * *

8. In § 411.145, revise the section as follows:

§ 411.145 When can my ticket be taken out of assignment?

(a) If you assigned your ticket to an EN or a State VR agency acting as an EN, you may take your ticket out of assignment for any reason. You must notify the PM in writing that you wish to take your ticket out of assignment. The ticket will be no longer assigned to that EN or State VR agency acting as an EN, effective with the first day of the month following the month in which you notify the PM in writing that you wish to take your ticket out of assignment. You may reassign your ticket under the rules in § 411.150.

(b) If your EN goes out of business or is no longer approved to participate as an EN in the Ticket to Work program, the PM will take your ticket out of assignment with that EN. The ticket will be no longer assigned to that EN effective on the first day of the month following the month in which the EN goes out of business or is no longer approved to participate in the Ticket to Work program. You will be sent a notice informing you that your ticket is no longer assigned to that EN. In addition, if your EN is no longer willing or able to provide you with services, or if your State VR agency acting as an EN stops providing services to you because you have been determined to be ineligible for VR services under 34 CFR 361.42, the EN or State VR agency acting as an EN, may ask the PM to take your ticket out of assignment with that EN or State VR agency. The ticket will be no longer assigned to that EN or State VR agency acting as an EN effective on the first day of the month following the month in which the EN or State VR agency acting as an EN makes a request to the PM that the ticket be taken out of assignment. You will be sent a notice informing you that your ticket is no longer assigned to that EN or State VR agency acting as an EN. You may reassign your ticket under the rules in § 411.150.

(c) For information about how taking a ticket out of assignment may affect medical reviews that we conduct to determine if you are still disabled under our rules, see §§ 411.171(c) and 411.220.

9. In § 411.150, revise the section heading and the third and fourth sentences of paragraph (a) and add a new fifth sentence to paragraph (a), and revise paragraph (b)(3) to read as follows:

§ 411.150 Can I reassign my ticket?

(a) * * * If you previously assigned your ticket to an EN, you may reassign your ticket to a different EN which is serving under the program and is willing to provide you with services, or you may reassign your ticket to a State VR agency acting as an EN. If you previously assigned your ticket to a State VR agency, you may reassign your ticket to another State VR agency acting as an EN or to an EN which is serving under the program and is willing to provide you with services. You may not reassign your ticket to a State VR agency if we previously made payment to a State VR under the cost reimbursement payment system with respect to you, and you were considered to be ''using a ticket'' while you received services from the State VR agency.

(b) * * *

(3) You must meet the requirements of § 411.125(a)(1) and (2) on or after the day you and a representative of the new EN sign your IWP or you and a representative of the State VR agency sign your IPE and the required form. You may reassign your ticket within 90 days of the effective date your ticket was no longer assigned, without meeting the requirements of § 411.125(a)(2).

* * * * *

10. In § 411.155, revise paragraphs (a)(2) and (a)(3), and add a new paragraph (a)(4) to reads as follows:

§ 411.155 When does my ticket terminate?

(a) * * *

(2) If you are entitled to widow's or widower's insurance benefits based on disability (see §§ 404.335 and 404.336 of this chapter), the month in which you attain full retirement age;

(3) If you are eligible for benefits under title XVI based on disability or blindness, the month following the month in which you attain age 65; or

(4) The month after the month in which your outcome payment period ends (see § 411.500(b)).

* * * * *

Subpart C—[Amended]

11. In § 411.165, revise the section heading and the second sentence to read as follows:

§ 411.165 How does using a ticket under the Ticket to Work program affect my continuing disability reviews?

* * * However, we will not begin a continuing disability review during the period in which you are using a ticket.

* * * * *

12. Amend § 411.166 by revising the second sentence of paragraph (b), adding a new sentence between the first and second sentences in paragraph (d), revising the second sentence in paragraph (g), and revising paragraph (h) to read as follows:

§ 411.166 Glossary of terms used in this subpart.

* * * * *

(b) * * * You may be eligible for an extension period if the ticket is in use and no longer assigned to an Employment Network (EN) or State VR agency acting as an EN (see § 411.220).

* * * * *

(d) * * * If you have a ticket which is available for assignment and are receiving VR services pursuant to an individualized plan for employment and the state VR agency has chosen the cost reimbursement payment system, the term ''initial 24-month period'' means the 24-month period that begins

with the month following the month described in § 411.170(b). * * *

* * * * *

(g) * * * We do not count any month during which your ticket is not assigned to an EN or State VR agency acting as an EN, or any month outside of the period during which you have a ticket which would otherwise be available for assignment and are receiving services from state VR agency that has chosen the cost reimbursement payment system.

(h) *Using a ticket means:* (1) You have assigned a ticket to an EN or a State VR agency that has elected to serve you as an EN and are making timely progress toward self-supporting employment as defined in § 411.180ff. (See § 411.171 for a discussion of when the period of using a ticket ends) or

(2) You have a ticket that would otherwise be available for assignment and are receiving VR services pursuant to an individualized plan for employment and the state VR agency has chosen to be paid, with respect to services that it provides to you, under the cost reimbursement payment system. You must also be making timely progress as defined in § 411.180ff.

13. Remove the undesignated centered heading before § 411.170.

14. Revise § 411.170 to read as follows:

§ 411.170 When does the period of using a ticket begin?

(a) The period of using a ticket begins on the effective date of the assignment of your ticket to an EN or state VR agency under § 411.140.

(b) If you have a ticket that would otherwise be available for assignment and are receiving VR services pursuant to an individualized plan for employment and the state VR agency has chosen the cost reimbursement payment system, the period of using a ticket begins on the later of—

(1) The effective date of your IPE; or

(2) The first day your ticket would otherwise have been assignable if you had not been receiving services from the State VR agency under cost-reimbursement.

15. Revise § 411.171 to read as follows:

§ 411.171 When does the period of using a ticket end?

The period of using a ticket ends with the earliest of the following—

(a) The month before the month in which the ticket terminates as a result of one of the events listed in § 411.155;

(b) The day before the effective date of a decision under in § 411.190, in § 411.195, in § 411.200 or in § 411.205 that you are no longer making timely progress toward self-supporting employment;

(c) The close of the three-month extension period which begins with the first month in which your ticket is no longer assigned to an EN or State VR agency acting as an EN (see § 411.145), unless you reassign your ticket within the three-month extension period (see § 411.220 for an explanation of the three-month extension period).

(d) The close of the 90-day period specified in § 411.150(b)(3);

(e) If you are a title II beneficiary (or a concurrent beneficiary under title II and title XVI)—

(1) The 36th month for which an outcome payment is made to an EN (including a State VR agency acting as an EN) under subpart H of this part; or

(2) If the State VR agency elected payment under subpart V of part 404 (or subpart V of part 416) of this chapter, for services provided to you, the 90th day after the services end; or

(f) If you are a title XVI beneficiary—

(1) The 60th month for which an outcome payment is made to an EN (including a State VR agency acting as an EN) under subpart H of this part; or

(2) If the State VR agency elected payment under subpart V of part 416 of this chapter, for services provided to you, the 90th day after the services end.

16. In § 411.175, revise the section heading and the first and fourth sentences of paragraph (a) to read as follows:

§ 411.175 What if a continuing disability review is begun before my ticket is in use?

(a) If we begin a continuing disability review before the date on which your ticket is in use, you may still assign the ticket and receive services from an EN or a State VR agency acting as an EN under the Ticket to Work program, or you may still receive services from a State VR agency that elects to be paid under the cost reimbursement payment system. * * * However, if your ticket was in use before we determined that you are no longer disabled, in certain circumstances you may continue to receive benefit payments (see §§ 404.316(c), 404.337(c), 404.352(d), and 416.1338 of this chapter). * * *

* * * * *

17. Remove the undesignated centered heading before § 411.180.

18. In § 411.180, revise paragraph (b)(1) and the first sentence of paragraph (c)(1) to read as follows:

§ 411.180 What is timely progress toward self-supporting employment?

* * * * *

(b) * * *

(1) *Initial 24-month period* means that the 24-month period that begins with the month following the month in which you first assigned your ticket, or the first month you have a ticket that would otherwise be available for assignment and are receiving services under an IPE from if the state VR agency that has chosen the cost reimbursement payment system. (See §§ 411.220(e) and 411.225(c) for when a new initial 24-month period may be established for you). We do not count any month during which the ticket is not assigned to an EN or State VR agency acting as an EN, or any month in which you have a ticket which would otherwise be available for assignment and are receiving services from state VR agency that has chosen the cost reimbursement payment system.

* * * * *

(c) *Guidelines.* * * *

(1) During the initial 24-month period after you assign your ticket, or after you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system, you must be actively participating in your plan.

* * *

* * * * *

19. In § 411.190, revise the first and third sentences of paragraph (a)(1) and the first sentence of paragraph (a)(2)(ii) to read as follows:

§ 411.190 How is it determined if I am meeting the timely progress guidelines?

(a) *During the initial 24-month period.* (1) *General.* During the initial 24-month period you assigned your ticket, or after you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system, you must be actively participating in your employment plan as defined in § 411.180(c). * * * If you or your EN or State VR agency acting as an EN report to the PM that you are temporarily unable to participate or are not actively participating in your employment plan during the initial 24-month period you assigned your ticket, or during the initial 24-month period or after you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system, the PM will give you the choice of placing your ticket in inactive status or resuming active participation in your employment plan.

(2) * * *

(ii) If your ticket is still assigned to an EN or State VR agency, acting as an EN,

or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system, you may reactivate your ticket by submitting a written request to the PM. * * *

* * * * *

§ 411.191 [Removed]

19. Remove § 411.191.

20. Revise § 411.210 paragraphs (b)(1)(ii), (b)(2)(ii), (b)(3)(ii), (b)(4)(ii), (b)(5)(ii), and the fourth sentences of both paragraphs (c)(1) and (c)(2) to read as follows:

§ 411.210 What happens if I do not make timely progress toward self-supporting employment?

* * * * *

(b) * * *

(1) * * *

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency acting as an EN, or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

* * * * *

(2) * * *

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency acting as an EN, or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

* * * * *

(3) * * *

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency acting as an EN, or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

* * * * *

(4) * * *

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency acting as an EN, or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

* * * * *

(5) * * *

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency acting as an EN, or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

* * * * *

(c) * * *

(1) * * * If the PM decides that you have satisfied the requirements for re-entering in-use status (including the requirement that your ticket be assigned to an EN or State VR agency acting as an EN, or that you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system), you will be reinstated to in-use status effective with the date on which the PM sends the notice of the decision to you. * * *

(2) * * * If we decide that you have satisfied the requirements for re-entering in-use status (including the requirement that your ticket be assigned to an EN or State VR agency acting as an EN, or you have a ticket which would otherwise be available for assignment and are receiving services under an IPE from a state VR agency that has chosen the cost reimbursement system), you will be reinstated to in-use status effective with the date on which we send the notice of the decision to you.

Subpart E—[Amended]

21. In § 411.325, revise paragraph (a) to read as follows:

§ 411.325 What reporting requirements are placed on an EN as a participant in the Ticket to Work program?

* * * * *

(a) Report to the PM in writing each time the EN accepts a ticket for assignment or the EN no longer wants a ticket assigned to it.

* * * * *

Subpart F—[Amended]

22. Revise § 411.350 to read as follows:

§ 411.350 Must a State VR agency participate in the Ticket to Work program?

A State VR agency may elect, but is not required, to participate in the Ticket to Work program as an EN. The State VR agency may elect on a case-by-case basis to participate in the Ticket to Work program as an EN, or it may elect to provide services to beneficiaries and be paid under the cost reimbursement payment system, referenced in §§ 404.2101 and 416.2201 of this chapter.

23. In § 411.355, revise the section heading, the third sentence in paragraph (a) and the last sentence of paragraph (c) to read as follows:

§ 411.355 What payment options does a State VR agency have?

(a) * * * On a case-by-case basis, the State VR agency may participate either—

* * * * *

(c) * * * When serving a beneficiary who does not have a ticket that can be assigned pursuant to § 411.140 of this chapter, the State VR agency may seek payment only under the cost reimbursement payment system.

* * * * *

§ 411.360 [Removed]

24. Remove § 411.360.

25. In § 411.365, revise the section heading and paragraph (a) to read as follows:

§ 411.365 How does a State VR agency notify us about its choice of a payment system for use when functioning as an EN?

(a) The State VR agency must send us a letter telling us which EN payment system it will use when it functions as an EN with respect to a beneficiary who has a ticket.

* * * * *

26. Revise § 411.370 to read as follows:

§ 411.370 Does a State VR agency ever have to function as an EN?

No. A State VR agency may choose to be paid under the cost reimbursement system under § 411.355.

27. In § 411.385, revise paragraph (a) introductory text, remove paragraph (a)(1) and redesignate paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2), respectively to read as follows:

§ 411.385 What does a State VR agency do if a beneficiary who is eligible for VR services has a ticket that is available for assignment or reassignment?

(a) Once the State VR agency determines that a beneficiary is eligible for VR services, the beneficiary and a representative of the State VR agency must agree to and sign the individualized plan for employment (IPE) required under section 102(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 722(b)). The State VR agency must submit the following information to the PM in order for the beneficiary's ticket to be considered in use:

* * * * *

28. Revise § 411.390 to read as follows:

§ 411.390 What does a State VR agency do if a beneficiary to whom it is already providing services has a ticket that is available for assignment?

If a beneficiary who is receiving services from the State VR agency under an existing IPE becomes eligible for a ticket that is available for assignment, the State VR agency must submit the information required in § 411.385(a) to the PM. We require this information in order for the beneficiary's ticket to be considered in use. If a beneficiary who is receiving services from the State VR agency under an existing IPE becomes eligible for a ticket that is available for assignment and decides not to assign the ticket to the State VR agency, the State VR agency is limited to the cost reimbursement payment system.

Subpart H—[Amended]

29. In § 411.500, revise paragraphs (b), (c), (e), and (f) to read as follows:

§ 411.500 Definitions of terms used in this subpart.

* * * * *

(b) *Outcome Payment Period* means a period of 36 months (or a period of 60 months for a title XVI disability beneficiary who is not concurrently a title II disability beneficiary), not necessarily consecutive, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of the performance of substantial gainful activity (SGA) or by reason of earnings from work activity. The outcome payment period begins with the first month, after the month the ticket was first assigned to an EN (or to a State VR agency acting as an EN), for which such benefits are not payable to the beneficiary because of the performance of SGA or by reason of earnings from work activity. The outcome payment period ends as follows:

(1) For a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary), the outcome payment period ends with the 36th month, consecutive or otherwise, ending after the date on which the ticket was first assigned to an EN (or to a State VR agency acting as an EN), for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of the performance of SGA or by reason of earnings from work activity.

(2) For a title XVI disability beneficiary who is not concurrently a title II disability beneficiary, the outcome payment period ends with the 60th month, consecutive or otherwise, ending after the date on which the ticket was first assigned to an EN (or to a State VR agency acting as an EN), for which Federal SSI cash benefits are not payable to the beneficiary by reason of earnings from work activity.

(c) *Outcome Payment System* is a system providing a schedule of payments to an EN (or a State VR agency acting as an EN) for each month, during an beneficiary's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of SGA or earnings from work activity.

* * * * *

(e) *Outcome Payment Month* means a month, during the beneficiary's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of SGA or earnings from work activity.

(f) *Outcome-Milestone Payment System* is a system providing a schedule of payments to an EN (or State VR agency acting as an EN) that includes, in addition to any outcome payments which may be made during the beneficiary's outcome payment period, payments for completion by a disability beneficiary of up to four Phase I milestones and up to eleven Phase 2 milestones (or up to eighteen Phase 2 milestones for a title XVI disability beneficiary who is not a concurrent title II disability beneficiary) directed toward the goal of self-supporting employment. The milestones for which payments may be made must occur prior to the beginning of the beneficiary's outcome payment period.

(1) *Phase I Milestones* are based on the beneficiary achieving a level of earnings that reflects initial efforts at self-supporting employment. They are based on the earnings threshold that we use to establish a trial work period service month as defined in § 404.1592(b) of this chapter. We use this threshold amount as defined in § 404.1592(b) of this chapter in order to measure whether the beneficiary's earnings level meets the milestone objective.

(2) *Phase 2 Milestones* are based on the beneficiary achieving a level of earnings that reflects partial efforts at self-supporting employment. They are based on the earnings threshold that we use to determine if work activity is SGA. We use the SGA earnings threshold amount in § 404.1574(b)(2) of this chapter. We use the SGA threshold amounts in order to measure whether the beneficiary's earnings level meets the milestone objective.

30. Revise § 411.505 to read as follows:

§ 411.505 How is an EN paid?

An EN (including a State VR agency acting as an EN) can elect to be paid under either the outcome payment system or the outcome-milestone payment system. The EN will elect a payment system at the time the EN enters into an agreement with SSA. (For State VR agencies, see § 411.365.) The EN (or State VR agency acting as an EN) may periodically change its elected EN payment system as described in § 411.515.

31. In § 411.510, revise paragraph (c) to read as follows:

§ 411.510 How is the State VR agency paid under the Ticket to Work program?

* * * * *

(c) If a beneficiary who is receiving services from the State VR agency under an existing individualized plan for employment becomes eligible for a ticket that is available for assignment, the State VR agency will notify the PM of the payment system election for such beneficiary.

32. In § 411.515, revise paragraph (b) to read as follows:

§ 411.515 Can the EN change its elected payment system?

* * * * *

(b) After an EN (or a State VR agency) first elects an EN payment system, the EN (or State VR agency) can choose to make one change in its elected payment system at any time prior to the close of the 12th month following the month in which the EN (or State VR agency) first elects an EN payment system.

* * * * *

33. In § 411.525, revise paragraphs (a)(1)(i), (a)(2), (b) and (c) to read as follows:

§ 411.525 How are the EN payments calculated under each of the two EN payment systems?

(a) * * *

(1)(i) Under the outcome payment system, we can pay up to 36 outcome payments to the EN (or State VR agency acting as an EN) for a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary). We can pay up to 60 outcome payments to the EN (or State VR agency acting as an EN) for a title XVI disability beneficiary who is not concurrently a title II disability beneficiary. For each month during the beneficiary's outcome payment period for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of SGA or earnings from work activity, the EN (or the State VR agency acting as an EN) is eligible for a monthly outcome payment. Payment for an outcome payment month under the outcome payment system is equal to 67 percent of the payment calculation base for the calendar year in which such month occurs, rounded to the nearest whole dollar (see § 411.550).

* * * * *

(2) Under the outcome-milestone payment system, we can pay the EN (or State VR agency acting as an EN) for up to four Phase 1 milestones achieved by a disability beneficiary who has assigned his or her ticket to the EN (or State VR agency acting as an EN). We can also pay the EN (or State VR agency acting as an EN) up to eleven Phase 2 milestones achieved by a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary) or up to eighteen milestones achieved by a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary) who has assigned his or her ticket to the EN (or State VR agency acting as an EN). The milestones for which payment may be made must occur prior to the beginning of the beneficiary's outcome payment period and meet the requirements of § 411.535. In addition to the milestone payments, monthly outcome payments can be paid to the EN (or State VR agency acting as an EN) during the outcome payment period. If the beneficiary's outcome payment period begins before the beneficiary has achieved all Phase 1 and Phase 2 milestones, then we will pay the EN a final milestone payment equal to the total amount of the remaining unpaid milestones, based on the payment calculation base for the calendar year in which the first month of the beneficiary's outcome period occurs, rounded to the nearest whole dollar.

(b) The outcome-milestone payment system is designed so that the total payments to the EN (or the State VR agency acting as an EN) for a beneficiary are less than the total amount that would have been paid if the EN were paid under the outcome payment system. Under the outcome-milestone payment system, the total payment to the EN (or the state VR agency acting as an EN) is about 90 percent of the total that would have been potentially payable under the outcome payment system for the same beneficiary.

(c) We will pay an EN (or State VR agency acting as an EN) to whom the beneficiary has assigned a ticket for milestones or outcomes achieved only in months prior to the month in which the ticket terminates (see § 411.155). We will not pay a milestone or outcome payment to an EN (or State VR agency acting as an EN) based on an beneficiary's work activity or earnings in or after the month in which the ticket terminates.

§ 411.530 [Removed]

34. Remove § 411.530.

35. Revise § 411.535 to read as follows:

§ 411.535 What are the milestones for which an EN can be paid?

(a) Under the outcome-milestone payment system, an EN can be paid up to four Phase 1 milestones achieved by title II and title XVI beneficiaries and up to eleven Phase 2 milestones achieved by a title II beneficiary or up to eighteen milestones for a title XVI beneficiary who has assigned his or her ticket to the EN (or State VR agency acting as an EN). The milestones must occur after the date on which the ticket was first assigned and after the beneficiary starts to work prior to the beginning of the beneficiary's outcome period (see § 411.500(b)).

(1) There are four Phase 1 milestones. The first Phase 1 milestone is met when a beneficiary has worked at least two weeks and earned 50% of the amount of a trial work period service month as defined in § 404.1592(b) of this chapter. The second Phase 1 milestone is met after a beneficiary has retained a job for three months and has gross earnings in each of those months equal to a trial work period service month as defined in § 404.1592(b) of this chapter. The third Phase 1 milestone is met after a beneficiary has retained a job for six months and has gross earnings in each of those months equal to a trial work period service month as defined in § 404.1592(b) of this chapter. The fourth Phase 1 milestone is met after a beneficiary has retained a job for nine months and has gross earnings in each of those months equal to a trial work period service month as defined in § 404.1592(b) of this chapter.

(2) A Phase 2 milestone is met for each calendar month in which the beneficiary has worked and has gross earnings from employment (or net earnings from self-employment as defined in § 404.1080 of this chapter) in that month that are more than the SGA threshold amount.

(3) If the beneficiary does not achieve all Phase 1 and Phase 2 milestones prior to the beginning of the beneficiary's outcome period, then we will pay the EN (or State VR agency acting as an EN) the final milestone payment equal to the total amount of the remaining unpaid Phase 1 and Phase 2 milestones. This payment will be based on the payment calculation base for the calendar year in which the first month of the beneficiary's outcome period occurs, rounded to the nearest whole dollar.

(4) If the State VR agency has already received payment for services under the cost-reimbursement system, the EN can be paid for up to eleven Phase 2 milestones achieved by title II beneficiaries or for up to eighteen milestones achieved by title XVI beneficiaries. In this situation, we would not pay Phase 1 milestones under § 411.135(a)(1).

(b) An EN (or State VR agency acting as an EN) can be paid for a milestone only if the milestone is attained after a beneficiary has assigned his or her ticket to the EN. See § 411.575 for other milestone payment criteria.

36. Revise § 411.540 to read as follows:

§ 411.540 What are the payment amounts for each of the milestones?

(a) The payment amount for each of the Phase I milestones for both title II and title XVI is equal to 120 percent of the payment calculation base for title II (as defined in § 411.500(a)(1)) for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(b) The payment amount for each of the Phase 2 milestones:

(i) For title II beneficiaries (including concurrent title II/title XVI disability beneficiaries) is equal to 36 percent of the monthly payment calculation base as defined in § 411.500(a)(1) for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar;

(ii) For title XVI beneficiaries (who are not concurrently title II disability beneficiaries) is equal to 36 percent of

the monthly payment calculation base as defined in § 411.500(a)(2) for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

37. Revise § 411.545 to read as follows:

§ 411.545 What are the payment amounts for outcome payment months under the outcome-milestone payment system?

(a) The amount of each monthly outcome payment under the outcome-milestone payment system:

(1) For title II beneficiaries (including concurrent title II/title XVI disability beneficiaries) is equal to 36 percent of the payment calculation base as defined in § 411.500(a)(1) for the calendar year in which the month occurs, rounded to the nearest whole dollar;

(2) For title XVI beneficiaries (who are not concurrently title II/title XVI disability beneficiaries) is equal to 36 percent of the payment calculation base as defined in § 411.500(a)(2) for the calendar year in which the month occurs, rounded to the nearest whole dollar.

(b) The following chart provides an example of how an EN would receive milestone and outcome payments.

PROPOSED OUTCOME—MILESTONE PAYMENT TABLE

[2005 figures for illustration only]

Payment type	Beneficiary earnings	SSDI amount of payment	Title SSI amount of payment
Phase 1 (120% of SSDI PCB) *			
Milestone 1	$295 for two weeks work	$1,042	$1,042
Milestone 2	$590/mo. × 3 months work (cumulative)	$1,042	$1,042
Milestone 3	$590/mo. × 6 months work (cumulative)	$1,042	$1,042
Milestone 4	$590/mo. × 9 months work (cumulative)	$1,042	$1,042
Total Phase 1		$4,168	$4,168
Phase 2 (36% of PCB)	Gross Earnings>$830.		
SSDI Milestones 1–11		$313 × 11 = $3,443	
SSI Milestones 1–18			$184 × 18 = $3,312
Total Phase 1 + 2 Milestones		$7,611 *	$7,480 *
Outcome Payments (36% of PCB)			
SSDI = 1–36	>$830/and monthly cash benefit not payable	$313 × 36 = $11,268	
SSI = 1–60	Sufficient earnings for federal cash benefits = "0".		$184 × 60 = $11,040
Total milestone and outcome payments.		$18,879	$18,520

* A Lump sum milestone is the remaining total milestones unpaid if the outcome period is reached before all the milestones are achieved. This can be any number of the remaining milestones and is paid after the first outcome payment is achieved.

38. Revise § 411.550 to read as follows:

§ 411.550 What are the payment amounts for outcome payment months under the outcome payment system?

Under the outcome payment system, the payment for an outcome payment month is equal to 67 percent of the payment calculation base for the calendar year in which the month occurs, rounded to the nearest whole dollar (see charts III and IV for an example of the proposed Outcome payment system for title II and title XVI).

39. Revise § 411.555 to read as follows:

§ 411.555 Can the EN keep the milestone and outcome payments even if the beneficiary does not achieve all outcome months?

(a) Yes. The EN (or State VR agency acting as an EN) can keep each milestone and outcome payment for which the EN (or State VR agency acting as an EN) is eligible, even though the title II beneficiary does not achieve all 36 outcome months or the title XVI beneficiary does not achieve all 60 outcome months.

(b) Except as provided in paragraph (c) of this section, payments which we make or deny to an EN (or a State VR agency acting as an EN) may be subject to adjustment (including recovery, as appropriate) if we determine that more or less than the correct amount was paid. This may happen, for example, because we determine that the payment determination was in error or because of an allocation of payment under § 411.560.

(c) If we determine that an overpayment or underpayment to an EN has occurred, we will notify the EN (or State VR agency acting as an EN) of the adjustment. We will not seek an adjustment if a determination or decision about a beneficiary's right to benefits causes an overpayment to the EN. Any dispute which the EN (or State VR agency) has regarding the adjustment may be resolved under the rules in § 411.590(a) and (b).

40. Revise § 411.560 to read as follows:

§ 411.560 Is it possible to pay a milestone or outcome payment to more than one EN?

Yes. It is possible for more than one EN (including a State VR agency acting as an EN) to receive payment based on the same milestone or outcome. If the beneficiary has assigned the ticket to more than one EN (or State VR agency acting as an EN) at different times, and more than one EN (or State VR agency) requests payment for the same milestone or outcome payment under its elected payment system, the PM will make a determination of the allocation of payment to each EN (or State VR agency acting as an EN). The PM will make this determination based upon the contribution of the services provided by each EN (or State VR agency acting as an EN) toward the achievement of the

outcomes or milestones. Outcome and milestone payments will not be increased because the payments are shared between two or more ENs (including a State VR agency acting as an EN).

41. Revise § 411.565 to read as follows:

§ 411.565 What happens if two or more ENs qualify for payment on the same ticket but have elected different EN payment systems?

We will pay each EN (or State VR acting as an EN) according to its elected EN payment system in effect at the time the beneficiary assigned the ticket to the EN (or the State VR agency acting as an EN).

42. Add § 411.566 to read as follows:

§ 411.566 May an EN use outcome or milestone payments to pay bonuses to the beneficiary?

Yes, an EN may use outcome or milestone payments to provide bonuses to the beneficiary, subject to other applicable Federal, State, or local laws that may govern an EN's use of these payments.

43. In § 411.575, revise the introductory text; paragraph (a)(1) introductory text; and paragraphs (a)(1)(i), (a)(2), (b)(1) introductory text, (b)(1)(ii), and (b)(2) to read as follows:

§ 411.575 How does the EN request payment for milestone or outcome payment months achieved by a beneficiary who assigned a ticket to the EN?

The EN (or State VR agency acting as an EN) will send its request for payment, evidence of the beneficiary's work or earnings, and other information to the PM.

(a) *Milestone payments.* (1) We will pay the EN (or State VR agency acting as an EN) for milestones only if

(i) The outcome-milestone payment system was the EN's (or State VR agency's) elected payment system in effect at the time the beneficiary assigned a ticket to the EN (or the State VR agency acting as an EN);

* * * * *

(2) The EN (or State VR agency acting as an EN) must request payment for each milestone achieved by a beneficiary who has assigned a ticket to the EN (or State VR agency acting as an EN). The request must include evidence that the milestone was achieved and other information as we may require to evaluate the EN's (or State VR agency's) request. We do not have to stop monthly benefit payments to the beneficiary before we can pay the EN (or State VR agency acting as an EN) for milestones achieved by the beneficiary.

(b) *Outcome payments.* (1) We will pay an EN (or State VR agency acting as an EN) an outcome payment for a month if—

* * * * *

(ii) We have not already paid for 36 outcome payment months (or a period of 60 outcome payment months for a title XVI disability beneficiary who is not concurrently a title II disability beneficiary) on the same ticket; and

* * * * *

(2) The EN (or State VR agency acting as an EN) must request payment for outcome payment months. Along with the request, the EN (or State VR agency acting as an EN) must submit evidence of the beneficiary's work or earnings (*e.g.*, a statement of monthly earnings from the employer or the employer's designated payroll preparer, or an unaltered copy of the beneficiary's pay stub). After we have started paying outcome payments to an EN (or State VR agency acting as an EN) based on evidence of the beneficiary's earnings, the EN (or State VR agency) must provide documentation of the beneficiary's continued work or earnings in such a manner or form and at such time or times as we may require, when requesting payment for additional outcome payments months with respect to that beneficiary. *Exception:* If the EN (or State VR agency) does not currently hold the ticket because it is unassigned or reassigned to another EN (or State VR agency), the EN (or State VR agency) must request payment, but is not required to submit evidence of the beneficiary's work or earnings.

44. Revise § 411.580 to read as follows:

§ 411.580 Can an EN receive payments for milestones or outcome payment months that occur before the beneficiary assigns a ticket to the EN?

No. An EN (or State VR agency acting as an EN) may be paid only for milestones or outcome payment months that are achieved after the first day on which the ticket is assigned to the EN (or State VR agency acting as an EN).

45. Add a new § 411.581 to read as follows:

§ 411.581 Can an EN receive milestone and outcome payments for months after a beneficiary takes his or her ticket out of assignment?

Yes. If a beneficiary whose ticket is assigned to an EN (or State VR agency acting as an EN) takes his or her ticket out of assignment (see § 411.145), the EN (or State VR agency) can receive payments under its elected payment system for milestones or outcome payment months that occur after the ticket is taken out of assignment, as long as the ticket has not terminated for any of the reasons listed in § 411.155. See § 411.560 for situations in which payment may be made to more than one EN or State VR agency based on the same milestone or outcome.

46. Add a new § 411.582 to read as follows:

§ 411.582 Can a State VR agency receive payment under the cost reimbursement system if a continuous 9-month period of substantial gainful activity is completed after the ticket is assigned to an EN?

Yes. If a State VR agency provides services to a beneficiary under 34 CFR 361.12, and elects payment under the cost reimbursement system, under subpart V of part 404 (or subpart V of part 416) of this chapter, the State VR can receive payment under the cost reimbursement system for services provided to the beneficiary if all the requirements under subpart V of part 404 (or subpart V of part 416) of this chapter are met.

47. Revise § 411.585 to read as follows:

§ 411.585 Can a State VR agency and an EN both receive payment for serving the same beneficiary?

Yes. A State VR agency and an EN can both receive payment for serving the same beneficiary.

(a) A State VR agency may act as an EN and serve a beneficiary. In this case, both the State VR agency acting as an EN and another EN may be eligible for payment based on the same ticket (see § 411.560).

(b) If the beneficiary had a ticket in use when receiving services from a State VR agency (see §§ 411.166–411.171) and the State VR agency received payment under the cost reimbursement system under subpart V of part 404 (or subpart V of part 416) of this chapter, the beneficiary may assign his or her ticket to an EN after completing services with the State VR agency, other than a State VR acting as an EN. The EN can then be paid for milestone payments and outcome payments under the outcome-milestone payment system or for outcome payments under the outcome payment system. See § 411.535.

(c) If the beneficiary first assigns a ticket to an EN, but not a State VR agency acting as an EN, the EN can be paid pursuant to the elected EN payment system. If the ticket becomes unassigned, and a beneficiary chooses to receive services from a State VR agency, the State VR agency may choose to be paid under the EN payment or the cost reimbursement system.

§ 411.587 [Removed]

59. Remove § 411.587.

60. In § 411.590, revise paragraph (d) to read as follows:

§ 411.590 What can an EN do if the EN disagrees with our decision on a payment request?

* * * * *

(d) Determinations or decisions we make about a beneficiary's right to benefits may cause payments we have already made to an EN (or denial of payment to an EN) to be incorrect, resulting in an underpayment or overpayment to the EN. If this happens, we will make any necessary adjustments to the payments (see § 411.555). (See § 411.555(c) for when we will not make an adjustment in a case in which an overpayment results from a determination or decision we make about a beneficiary's right to benefits.) While an EN cannot appeal our determination about an individual's right to benefits, the EN may furnish any evidence the EN has which relates to the issue(s) to be decided on appeal if the individual appeals our determination.

[FR Doc. 05–19530 Filed 9–29–05; 8:45 am]

BILLING CODE 4191–02–P

POSTAL SERVICE

39 CFR Part 111

New Preparation Requirements for Bundles of Mail on Pallets

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service™ is seeking comments on a proposal that would affect mailers who prepare bundles of Periodicals, Standard Mail, and Package Services flat-size mail or irregular parcels on pallets. The proposal would not affect mailers who prepare sacks, unbundled parcels, or trays on pallets.

Currently, mailers who prepare bundles of flat-size mail or bundles of irregular parcels on pallets must prepare a pallet if the mailing contains 500 or more pounds of bundles for a required sortation level. (''Sortation level'' refers to the distribution or separation of mail by ZIP Codes, range of ZIP Codes, or carrier route.) After all required pallets are prepared, mailers must place any remaining bundles in sacks.

Under this proposal, before placing any bundles in sacks, if there are 250 or more pounds of bundles addressed within the ZIP Code range for an area distribution center (ADC) or a bulk mail center/auxiliary service facility (BMC/ASF), mailers must prepare the ADC pallet (for Periodicals) or the BMC/ASF pallet (for Standard Mail and Package Services). If a mailing does not contain any ADC or BMC/ASF pallets—for example, the mailer has set the presort software to stop at the sectional center facility (SCF) level—but there are 250 or more pounds for an SCF, the mailer must prepare the SCF pallet.

DATES: We must receive comments on or before October 31, 2005.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Rm. 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments between 9 a.m. and 4 p.m., Monday through Friday, at USPS Headquarters Library, 11th Floor North, 475 L'Enfant Plaza, SW., Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Julia Carroll at 202–268–2108 or *Julia.Carroll@usps.gov.*

SUPPLEMENTARY INFORMATION: The Postal Service™ is finding ways to process mail more efficiently, thereby improving service to our customers and reducing costs.

Bundles of flat-size mailpieces or bundles of irregular parcels prepared on pallets are easier and generally less costly for us to handle than bundles in sacks. When customers present mail in sacks, the sacks must be opened and the contents unloaded before processing on our automated sorting equipment. In addition, we have found that bundles on pallets maintain their integrity to a greater degree than bundles in sacks. This proposal would help increase the volume of mail on pallets by revising the standards for required pallet preparation.

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) 705.8.5.2 provides required pallet preparation for Periodicals, Standard Mail, and Package Services mail (except specified discount rate Parcel Post). DMM 705.8.5.2a requires mailers who prepare bundles of flat-size mail or bundles of irregular parcels on pallets to prepare a pallet to a required sortation level if a mailing contains 500 or more pounds of bundles. Additional standards in DMM 705.8.9.1 require these mailers to place in sacks any bundles that cannot go on one of the required pallets.

Under this proposal, after preparing all other required pallets at the 500-pound required minimum, mailers who prepare bundles of flat-size mailpieces or bundles of irregular parcels on pallets must prepare additional pallets, under the following conditions:

- If 250 or more pounds of bundles remain for an ADC (for Periodicals) or for a BMC/ASF (for Standard Mail and Package Services), mailers must prepare the ADC or BMC/ASF pallet(s), as applicable for the class of mail.
- If there are no ADC or BMC/ASF pallets in a mailing—for example, if a mailer's presort software is set to stop at the SCF level—and 250 or more pounds remain for an SCF, mailers must prepare the SCF pallet.

We are proposing an effective date of March 1, 2006, for mailers to begin mailing under the revised standards.

In addition to the above changes, we also are removing text in 705.8.5.2 about labeling pallets and optional bundle reallocation, because we cover these topics in detail elsewhere in the DMM.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S. C. 553 (b),(c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 PREPARATION FOR PALLETS

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8.5 General Preparation

* * * * *

8.5.2 Required Preparation

[Revise 8.5.2 to require ADC, BMC/ASF, or SCF pallets at 250 pounds of bundles, as follows:]

The following standards apply to Periodicals, Standard Mail, and Package Services mail, except Parcel Post mailed at BMC Presort (8.17), OBMC Presort (8.18), DSCF (8.19, 8.20), and DDU rates (8.21).

a. Mailers must prepare a pallet to the required sortation level(s) for the class of mail when a mailing contains 500 or more pounds of bundles, sacks, or parcels or 72 linear feet or six layers of letter trays for the destination.

b. For bundles of flat-size mailpieces or bundles of irregular parcels on pallets, after all possible pallets are prepared under 8.5.2a, when 250 or more pounds of bundles remain for an ADC (Periodicals) or for a BMC/ASF (Standard Mail and Package Services), the ADC or BMC/ASF pallet must be prepared as applicable for the class of mail. Exception: If there are no ADC or BMC/ASF pallets in a mailing (e.g., if the presort software is set to stop at the SCF level) and 250 or more pounds remain for an SCF, prepare the SCF pallet.

c. If bundles remain that cannot be prepared on an ADC, BMC/ASF, or SCF pallet, place those bundles in sacks (8.9.1).

* * * * *

If we implement this proposal, we will publish an appropriate amendment to 39 CFR to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–19531 Filed 9–29–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2005–VA–0007; FRL–7977–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing the proposed rule published on September 12, 2005 which proposed approval of a redesignation request and maintenance plan submitted by the Commonwealth of Virginia for the City of Fredericksburg, Spotsylvania County, and Stafford County (the Fredericksburg area). The Fredericksburg area is currently designated nonattainment for the eight-hour ozone national ambient air quality standard (NAAQS). It is EPA's intent to publish a proposed rule in the near future which will re-propose approval of the redesignation of the Fredericksburg area and the associated maintenance plan, and provide an expanded discussion as to why the redesignation request for this area is approvable under the Clean Air Act.

DATES: The September 12, 2005 proposed rule published at 70 FR 53746 is withdrawn as of September 30, 2005.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 23, 2005.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 05–19616 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7977–3]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Montana. In the ''Rules'' section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action is not controversial. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: We must receive your comments by October 31, 2005.

ADDRESSES: Submit your comments by one of the following methods: 1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. 2. E-mail: *shurr.kris@epa.gov.* 3. Mail: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St., Ste. 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. 4. Hand Delivery or Courier: To Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St., Ste. 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

Instructions: Do not submit information that you consider to be Confidential Business Information (CBI) or information that should be otherwise protected from disclosure through regulations.gov, or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy Montana's application at the following addresses: MDEQ from 9 a.m.to 4 p.m., 1520 E 6th Ave., Helena, MT 59620–0901, contact: Bob Martin, phone number (406) 444–4194 and EPA Region 8, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, CO 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules'' section of this **Federal Register**.

Dated: September 22, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–19617 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7977–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Batavia Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 office is issuing this notice of intent to delete the Batavia Landfill Superfund Site (Site), located in the Town of Batavia, Genesee County, New York from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that potentially responsible parties have implemented all appropriate response actions, other than operation and maintenance and five-year reviews. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health or the environment. In the ''Rules and Regulations'' Section of today's **Federal Register**, EPA is publishing a direct final notice of deletion for the Batavia Landfill Superfund Site without prior notice of this action because EPA views this as a noncontroversial revision and anticipates no significant adverse comment. EPA has explained its reasons for this action in the preamble to the direct final deletion. If EPA receives no significant adverse comment(s) on this notice of intent to delete or the direct final notice of deletion or other notices it may issue, EPA will not take further action on this notice of intent to delete. If EPA receives significant adverse comment(s), it will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, it will do so in a subsequent final deletion notice based on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by October 31, 2005.

ADDRESSES: Written comments should be addressed to: Michael Walters, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael Walters at the address provided above, or by telephone at (212) 637–4279, by fax at (212) 637–4284 or by e-mail at *Walters.Michael@EPA.GOV*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 21, 2005.

Alan J. Steinberg,

Regional Administrator, U.S. EPA, Region II.

[FR Doc. 05–19614 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7976–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to partially delete the Jacobs Smelter Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a notice of intent to partially delete the Jacobs Smelter Superfund Site, located in Tooele County, Utah, from the National Priorities List (NPL) and requests public comments on this notice of intent. Specifically, EPA intends to delete Operable Unit 3 from the site, comprised only of soils within the Union Pacific Rail Road (UPRR) right-of-way. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended. The EPA and the state of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA have been completed for the properties subject to the partial deletion. However, this partial deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of partial deletion of the Jacobs Smelter Superfund Site without prior notice of intent to partially delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final partial deletion. If we receive no adverse comment(s) on this notice of intent to partially delete or the direct final notice of partial deletion, we will not take further action on this notice of intent to partially delete. If we receive adverse comment(s), we will withdraw the direct final notice of partial deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final partial deletion notice based on this notice of intent to partially delete. We will not institute a second comment period on this notice of intent to partially delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of partial deletion that is located in the ''Rules and Regulations'' section of this **Federal Register**.

DATES: Comments concerning this notice must be received by October 31, 2005.

ADDRESSES: Written comments should be addressed to: Jennifer Lane, Community Involvement Coordinator (80C), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6813 or 1–800–227–8917, ext. 6813 (Region 8 only). E-mail: *lane.jennifer@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Lloyd, Remedial Project Manager (8EPR-SR), U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6537 or 1–800–227–8917, ext. 6537 (Region 8 only).

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Partial Deletion, which

is located in the ''Rules and Regulations'' section of this **Federal Register**.

Information Repositories: Comprehensive information on the Jacobs Smelter Superfund Site, as well as information specific to this proposed partial deletion, is available for review at the following addresses:

U.S. Environmental Protection Agency Region 8 Records Center, 999 18th St., Suite 300, Denver, CO 80202–2466 (303) 312–6473. Hours: M–F, 8:30 a.m. to 4:30 p.m.

Tooele City Public Library, 128 West Vine Street, Tooele, UT 84074, (435) 882–2182. Hours: Tu–F, 11 a.m. to 7:30 p.m.; Sat, 10:30 a.m. to 6 p.m.

Utah Department of Environmental Quality, 168 North 1950 West, 1st Floor, Salt Lake City, UT 84116 (801) 536–4400. Hours: M–F, 8 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: September 21, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–19625 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819, 1832, and 1852

RIN 2700–AD17

Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Contractor Re-Certification of Program Compliance

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to amend the NASA FAR Supplement (NFS) to include a requirement for NASA's Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) contractors to complete a re-certification of program compliance prior to final payment. This requirement is being established to facilitate the Government's ability to hold contractors accountable for compliance with Federal statute, regulation, and program requirements as outlined in the Office of Inspector General's Management Alert Memorandum dated April 28, 2004. As part of its continuing effort to reduce the paperwork and respondent burden, NASA invites the general public and other Federal agencies to comment on this proposed rule and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: Comments should be submitted on or before November 29, 2005 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AD17 via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Marilyn J. Seppi, NASA, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments can also be submitted by e-mail to: *Marilyn.Seppi-1@nasa.gov.*

Comments on the information collection should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, e-mail: *Kathleen.shaeffer-1@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Marilyn J. Seppi, NASA, Office of Procurement, Contract Management Division, (703) 553–2551, e-mail: *Marilyn.Seppi-1@nasa.gov.*

Requests for additional information regarding the information collection should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *Kathleen.shaeffer-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 1832.12 of the NFS requires that all research and development contracts under the SBIR and STTR Programs include the clause 1852.232–83, Conditions for Final Payment. This clause provides direction to the contractor regarding completion and submission of a re-certification requirement prior to and as a condition of final payment. Currently, under the SBIR/STTR Programs the contractor is only required to certify at the time of proposal submission that the proposing entity has or has not received Federal funding for essentially equivalent work. This proposed new clause will require a post-award certification by the small business concern (SBC) for program compliance as a condition and prior to final payment. This change proposes a new clause 1852.232–83 for use in all SBIR Phase I, SBIR Phase II, and STTR contracts.

In addition, section 1819.73 requires the clauses 1852.219–80 Limitation on Subcontracting—SBIR Phase I, 1852.219–81 Limitation on Subcontracting—SBIR Phase II, and 1852.219–82 Limitation on Subcontracting—STTR in the respective SBIR and STTR contracts to delineate the subcontracting limitations necessary for contract performance. Also, section 1819.73 of the NFS requires the clauses 1852.219–83 Limitation of the Principal Investigator—SBIR Program and 1852.219–84 Limitation of the Principal Investigator—STTR Program, respectively, to delineate the employment of the principal investigator which is necessary for monitoring contract performance.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because the proposed re-certification prior to final payment to awardees is merely an update of the representations and certifications submitted at the time of proposal submission in accordance with Small Business Administrations (SBA's) SBIR Program Directive.

C. Paperwork Reduction Act

1. Abstract

NASA is requesting OMB approval for the new collection that will be created by the proposed amendment to the NFS requiring SBIR/STTR contractors to recertify program compliance prior to final payment.

2. Method of Collection

The NASA contract clause will require inclusion of the information as part of contractors' final payment invoice requests.

3. Data

Title: Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Contractor Re-Certification of Program Compliance.

Collection of Information: The Certification Required Prior to Final Payment.

The public burden for obtaining re-certification from the SBIR/STTR contracts is estimated annually to be 242 hours with an average annual cost of $12,100 for each SBIR/STTR Program year. The estimated burden has been calculated as follows:

Certification (1 required per contract)—484
Hours per certification— × 0.50 (30 minutes)
Certification Burden—242 hours
Average Hourly Rate—$50
Average Annual Cost—$12,100

The estimated number of certifications shown above is based upon the average total number of NASA's SBIR and STTR-related contracts awards for FY–2004, FY–2003, and FY–2002. However, no real cost is associated with SBIR/STTR contractors because the costs associated with this type of administrative work is part of the cost of doing business and usually found in the companies' direct or indirect expense rates and therefore included in their contract price. This estimate reflects the combined paperwork clearance request the Agency is submitting to OMB.

List of Subjects in 48 CFR 1819, 1832, and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1819, 1832, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1819, 1832, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS PROGRAMS

2. Subpart 1819.73 is added to read as follows:

1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

1819.7301 Scope of Subpart.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of The Small Business Act codified at 15 U.S.C. 631 as amended and the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), codified with amendments, at 15 U.S.C. 638. The Small Business Act requires that the Small Business Administration issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51 percent owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by this Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting Officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

1819.7302 NASA contract clauses and solicitation provisions.

(a) Contracting officers shall insert clause 1852.219–80 Limitation on Subcontracting SBIR Phase I Program in all Phase I contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(b) Contracting officers shall insert clause at 1852.219–81 Limitation on Subcontracting—SBIR Phase II Program in all Phase II contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert clause 1852.219–82 Limitation on Subcontracting—STTR Program in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(d) Contracting officers shall insert clause 1852.219–83 Limitation of the Principal Investigator—SBIR Program in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

(e) Contracting officers shall insert clause 1852.219–84 Limitation on Subcontracting—STTR Program in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982).

PART 1832—CONTRACT FINANCING

3. Subpart 1832.12 is added to read as follows:

1832.12—Final Payment Under SBIR and STTR Contracts

1832.1210 Contract clause.

Contracting officers shall insert clause 1852.232–83 Conditions for Final Payment SBIR and STTR Contracts in all Phase I and Phase II contracts awarded under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs established pursuant to Public Law 97–219 (the Small Business Innovation Development Act of 1982). The clause is limited to use solely in contracts awarded under the SBIR/STTR Programs.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Clauses 1852.219–80, 1852.219–81, 1852.219–82, 1852.219–83, and 1852.219–84 are added to read as follows:

* * * * *

1852.219–80 Limitation on Subcontracting—SBIR Phase I.

As prescribed in 1819.7302(a), insert the following clause in all SBIR Phase I contracts:

Limitation on Subcontracting—SBIR Phase I (XX/XX)

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

1852.219–81 Limitation on Subcontracting—SBIR Phase II.

As prescribed in 1819.7302(b), insert the following clause in all SBIR contracts:

Limitation on Subcontracting—SBIR Phase II (XX/XX)

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract

price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

1852.219–82 Limitation on Subcontracting—STTR Program.

As prescribed in 1819.7302(c), insert the following clause in all SBIR and STTR solicitations and contracts:

Limitation on Subcontracting—STTR Program (XX/XX)

The Contractor (small business concern (SBC)) shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing, if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution (RI). Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

1852.219–83 Limitation of the Principal Investigator—SBIR Program *OR* Principal Investigator—Primary Employment—SBIR Program.

As prescribed in 1819.7302(d), insert the following clause in all SBIR solicitations and contracts:

Limitation of the Principal Investigator—SBIR Program *OR* Principal Investigator—Primary Employment—SBIR Program (XX/XX)

The primary employment of the principal investigator shall be with the small business concern (SBC)/ Contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the Contractor/SBC. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of Clause)

1852.219–84 Limitation of the Principal Investigator—STTR Program.

As prescribed in 1819.7302(e), insert the following clause in all STTR solicitations and contracts:

Limitation of the Principal Investigator—STTR Program (XX/XX)

(a) The primary employment of the principal investigator (PI) identified in this STTR contract is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the contractor/ SBC or RI.

(b) The principal investigator (PI) is considered to be key personnel in the performance of this contract and may not have been employed by the contractor/SBC. The Contractor/SBC whether or not the employer of the PI shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of Clause)

5. Section 1852.232–83 is added to read as follows:

1852.232–83 Conditions for Final Payment—SBIR and STTR Contracts.

As prescribed in 1832.1210, insert the following clause in all SBIR and STTR solicitations and contracts:

Conditions for Final Payment—SBIR and STTR Contracts (XX/XX)

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;

2. No other Federal funding award has been received for essentially equivalent work performed under this contract;

3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;

4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by the Contracting Officer on (*insert date of approval or modification number.*);

5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;

6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on (*insert date of approval or modification number.*); and

7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract and may not have been employed by the Contractor/SBC. However, the Contractor/SBC did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on (*insert date of approval or modification number.*).

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 U.S.C., Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of Clause)

[FR Doc. 05–19399 Filed 9–29–05; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AU08

Refuge-Specific Public Use Regulations for Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to open private lands within the boundaries of Kodiak National Wildlife Refuge in Alaska to public use, with a permit, complying with our commitments made under a Conservation Easement among the United States, the State of Alaska, and Koniag, Inc. The Conservation Easement furthers the missions of the Service and the National Wildlife Refuge System and the purposes of Kodiak National Wildlife Refuge. The easement lands

affected by this rule are along Karluk River and Karluk Lake on Kodiak Island, Alaska. The rule will apply as long as the easement is in place. Without this rule, the Service would fail to comply with the terms of the Conservation Easement.

DATES: We must receive your comments on or before October 31, 2005.

ADDRESSES: Submit written comments to Abbey Kucera, Kodiak National Wildlife Refuge, 1390 Buskin River Road, Kodiak, Alaska 99615. See Request for Public Comments section of **SUPPLEMENTARY INFORMATION** for information on electronic submission.

FOR FURTHER INFORMATION CONTACT: Abbey Kucera (907) 487–2600; Fax (907) 487–2144.

SUPPLEMENTARY INFORMATION: Kodiak National Wildlife Refuge was established in 1941 by Executive Order for the purpose of protecting the natural feeding and breeding ranges of brown bears and other wildlife on Uganik and Kodiak Islands. The lands now under the Conservation Easement were once refuge lands. The Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601–1624) (Act) allowed refuge lands to be conveyed to Alaska Native Corporations established under the Act, including the lands now covered by this Conservation Easement. In 2002, the Conservation Easement was signed, calling for these lands to be managed similarly to refuge lands and requiring refuge-issued permits for most public recreational use of the Karluk River and Karluk Lake lands.

Background About Kodiak Refuge

The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*, 43 U.S.C. 1602) expanded the purposes for which Kodiak National Wildlife Refuge was established to include: (i) To conserve fish and wildlife populations [and] habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonids, sea otters, sea lions and other marine mammals and migratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and other habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

Kodiak Refuge encompasses almost two million acres in southwestern Alaska, including about two-thirds of Kodiak Island. The city of Kodiak, where refuge headquarters are located, is about 250 air miles south of Anchorage, about 20 miles northeast of the refuge boundary on Kodiak Island, and about 60 air miles northeast of Karluk Lake.

Kodiak Refuge is characterized by a large range of habitats within a relatively small geographic area. Because of this, the refuge supports some of the highest densities of brown bears, nesting bald eagles, and spawning salmon found anywhere in North America. The mountainous interior of Kodiak Island, with several peaks over 4,000 feet in elevation, is covered by lush, dense vegetation during the summer, with alpine vegetation on the highest slopes. No place on the refuge is more than 15 miles from the ocean. Access to the refuge is primarily by float plane and boat. Karluk River and Karluk Lake have runs of all five species of Pacific Salmon (chinook, sockeye, coho, pink, and chum) and steelhead. Rainbow trout, Dolly Varden, and Arctic char are also found there.

Kodiak Refuge was established primarily to protect the brown bear. With an estimated population of 2,100 bears, the refuge contains some of the best brown bear habitat in the world supporting some of the highest concentrations of brown bear found anywhere in the world. These bears feed on spawning salmon and forage throughout most of the refuge. The Karluk River drainage is one of the most important fisheries to bears, with up to 200 bears using the Karluk area from mid-June to the end of September.

Under our regulations implementing the Alaska National Interest Lands Conservation Act (50 CFR 36.31), all refuge lands in Alaska are open to public recreational activities as long as such activities are conducted in a manner compatible with the purposes for which the refuge was established. Such recreational activities include, but are not limited to: sightseeing, nature observations and photography, sport hunting, sport fishing, boating, camping, hiking, picnicking, and other related activities (50 CFR 36.31(a)). The National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, defines ''wildlife-dependent recreation'' and ''wildlife-dependent recreational use'' as ''hunting, fishing, wildlife observation and photography, or environmental education and interpretation'' (16 U.S.C. 668ee(2)). We encourage these uses, and they will receive emphasis in management of the public use of the refuge.

Key Provisions of the Conservation Easement

The Conservation Easement was established in 2002 for 10 years with an option to renew it for another 10 years. Koniag agrees to confine use of Conservation Easement lands to fish and wildlife management and conservation activities, subsistence gathering activities, archaeological investigations, and recreational activities. We agree to establish, maintain, and enforce a permit system that imposes specific limits on the level and location of public recreational use on lands within a ½-mile band on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. We are required to conduct a study to establish such limits. The study must consider whether the impact of public use may be reduced to satisfactory levels by measures such as public education, and we are required to consider these measures prior to restricting public access. However, while we are conducting this study, we must annually limit the number of recreational visitors to the area during the period June 10 through July 15 (limited-use period) to a maximum of 70 scheduled visitors on any day. The 70-per-day limit applies to both visitors obtaining permits from us (currently limited to 28 people per day) and visitors using the area as clients of guides authorized by Koniag, Inc. (currently limited to 42 people per day).

We began requiring permits for visitors to the area in 2002, under the authority of temporary restrictions issued by the Refuge Manager. The proposed regulation will replace these temporary restrictions and allow us to continue to implement the Conservation Easement. We began the required study in 2002 and anticipate completing it in 2005. In the interim, parties of up to six people may apply together for permits issued by the refuge; permits are issued for each member of the party. Each individual may obtain only one nontransferable permit for a visit of up to 7 consecutive days during a calendar year. Parties will apply by a deadline established by the refuge and, will be selected by lottery if there are more visitors than scheduled visits available. Remaining available scheduled visits will be allocated on a first come, first-served basis. To date, we have not had visitor use reach the limit of 70 people per day during the limited-use period. During the remainder of the year, July 16 through June 9, there are no limits on the number of permits available; visitors

apply for permits individually and permits are issued to individuals.

In summary, the Conservation Easement allows the Service to open and manage public use of private lands. It also requires the Service to establish a permit system for some of these lands. The purpose of the proposed regulation is to provide the authority for the Service to require visitors to obtain permits to visit easement lands along the Karluk River and Karluk Lake.

Plain Language Mandate

In this rule we use ''you'' to refer to the reader and ''we'' to refer to the Service, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice. Where the word ''permit'' occurs, a permit is required.

Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of refuges.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(a)) and the National Wildlife Refuge Administration Act as amended by the Refuge Improvement Act of 1997 (16 U.S.C. 668dd) authorized us to enter into the Conservation Easement with Koniag, Inc., and the State of Alaska.

Request for Comments

You may comment on this proposed rule by any one of several methods:

1. Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

2. You may mail comments to Abbey Kucera, Kodiak National Wildlife Refuge, 1390 Buskin River Road, Kodiak, AK 99615.

3. You may comment via the Internet to *Abbey_Kucera@fws.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AU08'' and your full name and return mailing address in your Internet message. If you only use your e-mail address, we will consider your comment to be anonymous and will not consider it in the final rule. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at (907) 487–2600 or toll-free at (888) 408–3514.

4. You may fax comments to Abbey Kucera, Kodiak National Wildlife Refuge, at 907–487–2144.

5. Finally, you may hand-deliver or courier comments to the address given above.

We seek comments on this proposed rule and will accept comments by any of the methods described above. We make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing this refuge-specific regulation would jeopardize visitors' ability to obtain permits in a timely fashion. Since many people who visit the area are from outside Alaska, allowing people to obtain permits earlier allows time for these visitors to make travel arrangements. The proposed rule is an extension of practices successfully implemented by refuge staff for the last 2 years as a trial period under a temporary restriction. We must administer the public use program on the Karluk drainage using permits or we will violate the Conservation Easement. Without the permit system in place, general public use of these private lands would not be allowed.

When finalized, we will incorporate this regulation into 50 CFR 36.39(j). Part 36 contains general provisions for use and management of all Alaska National Wildlife Refuges and supplements the general National Wildlife Refuge System regulations found in title 50 CFR Chapter I, subpart C.

Clarity of This Regulation

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to *Execsec@ios.doi.gov*.

Regulatory Planning and Review

Executive Order 12866

In accordance with the criteria in E.O. 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

a. This rule would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A brief assessment to clarify the costs and benefits associated with this rule follows.

This rule would require a permit for recreational activities on Conservation Easement land, which is owned by Koniag, Inc., and is within the boundaries of Kodiak National Wildlife Refuge in Alaska. The easement land is within ½ mile of the Karluk River and

Karluk Lake shoreline. To access the area, visitors must: (1) Have a permit from the refuge; (2) be a concessionaire or a client of a concessionaire authorized by Koniag, Inc.; or (3) be an authorized subsistence user. The baseline (status quo) is defined as the conditions before the temporary restriction was adopted. Therefore, all permits associated with the Conservation Easement land are new.

Visitation to the easement land consists primarily of anglers because of the world class king salmon fishing on the Karluk River. In addition to angling, other activities may include hiking, camping, hunting, and watching wildlife such as Kodiak brown bears.

During the limited use period from June 10 to July 15, the maximum number of recreational visitors that can access the area is limited to 70 people per day (28 holding refuge permits and 42 clients of guides holding Koniag, Inc., permits). Outside of this limited use time period (July 16 to June 9), there is no limit to the number of visitors. In all of 2004, 339 visitors were guided with permits from Koniag, Inc., and 240 visitors were unguided with permits from Kodiak National Wildlife Refuge. Approximately 110 refuge permits were for the limited use period and 130 refuge permits were for outside of the limited use period. Thus, 579 people visited the Karluk River and Lake Conservation Easement land for recreation in 2004.

Throughout the temporary restriction, official monitoring of visitation has shown that no applicants have been denied access to the Conservation Easement land. Therefore, we do not expect that the permit requirement will have an effect on the number of users on the easement land.

Costs Incurred

There are no monetary fees for any of these permits. Costs incurred are due to the time to fill out the application and time required to process the permit application. Applicants need about 15 minutes to apply for a permit and fax or mail it to the refuge. Approximately 15 minutes are needed for the refuge to process an application. The majority of applications are electronically produced and faxed to the refuge. The average annual time commitment for visitors is approximately 60 hours (15 minutes x 240 applications). The average annual time commitment for the refuge is about 60 hours (15 minutes x 240 permits).

Benefits Accrued

This rulemaking would allow the public to continue to use the lands along Karluk River and Karluk Lake. It would provide an official system to gather the information necessary to track visitor use and help ensure visitor safety. The proposed rulemaking would also better distribute the number of visitors throughout the peak season in the future if use increased. While the number of visitors is not expected to change in the immediate future, if use does increase in the future, visitors could continue to experience conditions similar to those today along Karluk River and Lake. The permit system would allow the refuge to distribute the number of visitors throughout the peak season thus avoiding fishing congestion.

b. This proposed rule would not create inconsistencies with other Federal agencies' actions. This action pertains solely to the management of Conservation Easement lands within Kodiak National Wildlife Refuge.

c. This proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of the Conservation Easement.

d. This proposed rule would not raise novel legal or policy issues. This proposed rule requires a permit to access the Koniag Conservation Easement land. This proposed rule continues the practice of allowing recreational public use of many lands managed by national wildlife refuges.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act [as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)], whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

Small businesses that may be affected would include those located in Kodiak Island Borough, Alaska. Because this proposed rule is not expected to affect recreational activities in the area, this rule would not have a significant effect on small businesses engaged in activities in the borough. Therefore, we certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act 5 U.S.C. 804(2). This rule reduces regulatory obligations as discussed in Executive Order 12866 above; therefore, based on the information included in the Appendix, this rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, the rule does not have any takings implications. This regulation will affect only conservation easement lands owned by a willing participant, Koniag, Inc., by allowing public use of private lands.

Federalism (E.O. 13132)

This rule has no Federalism implications to warrant the preparation of a Federalism Assessment under E.O.

13132. Permit holders who choose to fish are regulated by Alaska Department of Fish and Game regulations. Guides and their clients must be authorized by Koniag, Inc. In negotiating the Conservation Easement, we coordinated with State and Tribal governments, and the State of Alaska is a party to the Conservation Easement.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. A violation of the rule is classified as a misdemeanor offense.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The proposed rule has no effect on energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined there are no effects. Koniag consulted with area Tribal governments in drafting the Conservation Easement. Other provisions of the Conservation Easement provide for preference for certain services be given to Koniag shareholders who reside in Larsen Bay or Karluk and to the tribal governments of Larsen Bay and Karluk.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0014). See 50 CFR 36.3 for information concerning that approval. We will amend our information collection to include the burden hours associated with this regulation. 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.

Endangered Species Act Section 7 Consultation

No species listed as endangered under the Endangered Species Act is known to occur within the easement lands. In 2004, a Section 7 consultation under the Endangered Species Act was conducted for the Draft Revised Comprehensive Conservation Plan, Kodiak National Wildlife Refuge. This plan includes the proposed management of Conservation Easement lands. The plan was found to be fully consistent with Section 7 of the Endangered Species Act by the Service and the National Marine Fisheries Service.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) (NEPA) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. A categorical exclusion from NEPA documentation applies under the Department of the Interior Manual, 516 DM 8 B(10).

Primary Author

Abbey Kucera, Supervisory Natural Resources Specialist, Kodiak National Wildlife Refuge, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend title 50, part 36, subpart E of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, as amended, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. Amend § 36.39 by adding paragraph (j)(3) to read as follows:

§ 36.39 Public use.

* * * * *

(j) Kodiak National Wildlife Refuge.

* * *

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(3) *Permit requirement for Conservation Easement lands.* (i) Pursuant to the terms of a Conservation Easement held by the United States and the State of Alaska, we manage public use of certain lands owned by Koniag, Inc. These lands are inholdings within the exterior boundaries of the Kodiak National Wildlife Refuge. The Conservation Easement was recorded in the Kodiak Recording District, Alaska, on December 6, 2002, as document number 2002–003448–0. The lands subject to the Conservation Easement to which the permit requirements in this subsection apply are all lands within ½ mile of the west shore of Karluk Lake, from the lake outlet to the southern boundary of T. 32 S., R. 30 W. (surveyed), Seward Meridian; all lands within ½ mile of the east shore of Karluk Lake, from the lake outlet to a point due east of the north end of Camp Island; and all lands within a ½-mile band of land on either side of the Karluk River, from the Karluk Lake outlet downstream to the refuge boundary. You are prohibited from using these lands unless you have a nontransferrable permit from the refuge, are a concessionaire or a client of a concessionaire authorized by Koniag, Inc., to provide revenue-producing visitor services, or you are an authorized user in accordance with section 7(d) of the Conservation Easement. A map is available from the refuge showing the location of the easement lands which are subject to the permit requirement.

(ii) Interim requirements. The Conservation Easement requires us to conduct a study to determine the level of use and how the permit system will work. The following permit procedures and limits apply only until the study is completed, or management of the Conservation Easement is changed by agreement of the three parties (Koniag, Inc., State of Alaska, and Kodiak National Wildlife Refuge). For the period June 10 to July 15 the following conditions apply:

(A) The maximum number of visitors scheduled on one day is limited to 70. Should weather preclude a scheduled visitor from arriving or leaving as planned, more than 70 visitors may be on site at the same time.

(B) The 70 visitors are allocated 28 nonguided (permits issued by the refuge) and 42 guided (under permits issued by Koniag, Inc.).

(C) Parties of up to six people may apply together for permits issued by the refuge; permits are issued for each member of the party.

(D) Each individual may obtain only one nontransferable permit for a visit of up to 7 consecutive days during a calendar year. Parties will apply by a deadline established by the refuge and will be selected by lottery if there are more visitors than scheduled visits available. Remaining available

scheduled visits will be allocated on a first come, first-served basis.

(E) During the remainder of the year, July 16 through June 9, there are no limits on the number of permits available; visitors apply for permits individually and permits are issued to individuals.

Dated: September 7, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–19570 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 189
Friday, September 30, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 26, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Qualified Products List for Water Enhancers.

OMB Control Number: 0596–0182.

Summary of Collection: The Forest Service (FS) objective is, ''To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively.'' To accomplish their objective, FS evaluates chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. For Water Enhancer products the FS requires that a Technical Data Form be completed, the information collected here is specific mixing requirements and hydration requirements for water enhancer products. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 26.

Forest Service

Title: Qualified Products List for Foam Fire Suppressants.

OMB Control Number: 0596–0183.

Summary of Collection: The Forest Service (FS) objective is, ''To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively.'' To accomplish their objective, FS evaluates chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. For Class A foam products the FS requires that a Technical Data Form be completed, the information collected here is specific mixing requirements. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 19.

Forest Service

Title: Qualified Products List for Long-Term Retardant Fire Suppressants.

OMB Control Number: 0596–0184.

Summary of Collection: The Forest Service (FS) objective is, ''To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively.'' To accomplish their objective, FS evaluates

chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. For Long-term retardant products the FS requires that a Technical Data Form be completed, the information collected here is specific mixing requirements and hydration requirements of gum-thickened retardants. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 56.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–19534 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board. This meeting is open to the general public.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet October 18–20, 2005.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at the Best Western Capitol Skyline Hotel, 10 I Street, SW., Washington, DC 20024–4299. You may submit comments by any of the following methods: Mail/Hand-delivery: National Agricultural Research, Extension, Education, and Economics Advisory Board Office; U.S. Department of Agriculture; Room 344–A, Jamie L. Whitten Building; 1400 Independence Avenue, SW., Washington, DC 20250–2255; Fax: (202) 720–6199; E-mail: *dhanfman@csrees.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, (202) 720–3684.

SUPPLEMENTARY INFORMATION: On Tuesday, October 18, 2005, 10 a.m. to 12 p.m., an Orientation Session for new National Agricultural Research, Extension, Education, and Economics Advisory Board (the Board) members will be held. The full Board meeting will convene at 1:30 p.m. with introductory remarks provided by the Chair of the Board and U.S. Department of Agriculture (USDA) officials. There will be introductions of Board members followed by a general Board business session, and election of Executive Committee officers. The Research, Education, and Economics (REE) mission area will respond on behalf of the Secretary to several Board recommendations made to USDA and REE over the past year, followed by Board questions and discussion. At 4 p.m., a professional staff member from the Agriculture Committee or Appropriations Subcommittee of U.S. Congress will be invited to provide perspectives on key food, fiber, and agricultural-related issues in Congress and share ideas on the Board's future role. This will be followed with comments on the 2007 Farm Bill as it relates to REE issues. A period will be open for public comments, and the meeting will adjourn at 5 p.m. An evening meeting will be held from 6 p.m. to 9 p.m. on ''Critical Crossroads in Agriculture: Implications & Expectations for Research, Education, Extension & Economics.'' Focus leaders will stimulate discussion on three specific mini-sessions within this theme: (1) Mitigating the Risk of Emerging Diseases Transmissible to Humans; (2) Changes in Rural America and Links to Research, Education, and Economics; and (3) Strengthening Partnerships. USDA's National Agricultural Library (NAL) will feature its role in serving REE, USDA, Land-Grant partners, and the Nation's citizenry on critical food, fiber, natural resources, and forestry issues.

On Wednesday, October 19, 2005, from 9 a.m. to 5:30 p.m., the three mini-sessions will be held to obtain expert input by stakeholders on the respective focus areas, with emphasis on the role that USDA's research, education, and economics can plan in addressing the issues. The floor will be open for public comments from 5:35 p.m. to 5:45 p.m. followed by adjournment.

On Thursday, October 20, 2005, there will be an important wrap-up of initial findings from the three mini focus sessions held the prior day, followed by public comments and adjournment of the Board meeting at 9 a.m. The Board's Specialty Crop Committee will hold an information gathering Listening Session following the Board Meeting. The Listening Session will be from 9:30 a.m. to 4:45 p.m. and on Friday, October 20, 2005, from 8:30 a.m. to 11:45 a.m. at the same hotel location in Washington, DC (see 70 FR 54350 September 14, 2005). Expert panelists will provide input on specific topics related to specialty crops and will suggest ways that research, extension, and economics can best support the needs of the specialty crop industry. The Listening Session will provide the Specialty Crop Committee with input to respond to its charge by Congress. Board members and interested individuals are encouraged to attend both public meetings.

Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Thursday, November 3, 2005). All statements will become a part of the official record of the Board and will be kept on file for public review in the Board's office. For a copy of the draft agenda, please get in touch with the contact person cited above.

Done at Washington, DC this 28th day of September, 2005.

Merle D. Pierson,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 05–19706 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Refined Sugar Re-Export Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Request for comment.

The Foreign Agricultural Service (FAS) requests comments on a proposed temporary waiver of certain provisions of the Refined Sugar Re-Export Program. Due to Hurricane Katrina, major disruptions to some U.S. sugar refining operations have occurred and seriously impacted sugar trade, including exports. In response, and using the waiver authority under sugar re-export program found at 7 CFR 1530.113 for licensed refiners, FAS proposes to temporarily extend from 90 days to 270 days the period in which licensed refiners must export or transfer an equivalent amount of refined sugar, after entering a quantity of raw can sugar, if such entry results in a positive balance to their license. Comments are welcomed regarding whether the waiver should be made or not, or about details of the terms of such a proposed waiver. Comments to this notice should be submitted within October 5, 2005 to Ron Lord, Deputy Director, Import Policies and Programs Division, Foreign Agricultural Service, USDA, 202–720–2916, by fax to 202–720–0876, or by e-mail to *Ronald.lord@usda.gov.*

Dated: September 21, 2005.

W. Kirk Miller,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 05–19577 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals for Woody Biomass Utilization Grant—Hazardous Fuel Reduction on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Request for Proposals.

SUMMARY: The USDA Forest Service, State and Private Forestry, Technology Marketing Unit, located at the Forest Products Laboratory, requests proposals for forest products projects that increase the use of woody biomass from or near national forest lands. The woody biomass utilization grant program is intended to help improve forest restoration activities by using and creating markets for small-diameter material and low-valued trees removed from hazardous fuel reduction activities. These funds are targeted to help communities, entrepreneurs, and others turn residues from hazardous fuel reduction projects into marketable forest products and/or energy products.

DATES: *Pre-application Deadline:* Close of business December 1, 2005.

Full application Deadline: Close of business March 1, 2006.

ADDRESSES: All pre- and full-application packages must be sent to the following address: ATTN: Shawn Lacina, Grants and Agreements Specialist, Forest Products Laboratory, 507 Highland Ave., Madison, WI 53705–2398. More detailed information regarding what to include in the pre- and full-application and definitions of terms are available at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants). Paper copies of the information are also available by contacting the USDA Forest Service, S&PF Technology Marketing Unit, Madison, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Shawn Lacina, Grants and Agreements Specialist, (608) 231–9282, e-mail to *slacina@fs.fed.us,* or; technical questions, contact Susan LeVan-Green, Program Manager, (608) 231–9504, e-mail to *slevan@fs.fed.us.*

SUPPLEMENTARY INFORMATION: To meet the shared goals of Public Law 108–148 Healthy Forest Restoration Act, Public Law 109–190 the Energy Policy Act of 2005, and Public Law 109–54 Appropriation Act of 2006, the agency is requesting proposals to address the nationwide challenge in dealing with low-valued material removed from hazardous fuel reduction activities. The Woody Biomass Utilization Grant Program has a pre-application submission process, and upon notification, selected pre-applicants will be asked to submit a full application. Goals of the grant program are the following:

- Help reduce management costs by increasing value of biomass and other forest products generated by hazardous fuel treatments.
- Create incentives and/or reduce business risk for increased use of biomass from or near national forestlands (must include National Forest System lands, however, may also include other lands such as, Bureau of Land Management, Tribal, State, local, and private).
- Institute projects that target and help remove economic and market barriers to using small-diameter trees and woody biomass.
- Require a Forest Service letter of support for the woody biomass grant project on or near National Forest System lands.

Woody Biomass Grants Program

1. Eligibility Information. a. Eligible Applicants. Eligible applicants are State, local, and Tribal governments, school districts, communities, non-profit organizations, businesses, companies, corporations, or special purpose districts, *e.g.*, public utilities districts, fire districts, conservation districts, or ports. Only one application per business or organization will be accepted. Construction projects involving a permanent building or infrastructure item, such as roads, are not allowed.

b. Cost Sharing (Matching Requirement). Applicants must demonstrate at least a 20% match from non-Federal sources, which can include cash or in-kind contributions.

2. Duns Number. All applicants must include a Dun and Bradstreet (D&B), Data Universal Numbering System (DUNS) number in their full application. For the purpose of this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for an award. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line (1–866–705–5711) or register on-line at *https://eupdate.dnb.com/requestoptions/government/ccrreg/.*

3. Award Information. At least $4.0 million are available for granting under this program. Individual grants will not be less than $50,000 or more than $250,000. Successful applicants will be announced by April 1, 2006. The maximum length of the award is 3 years from the date of award. Written, quarterly financial and semi-annual performance reports will be required.

4. Application Review Process. A two-step technical evaluation process is used for applications submitted under this solicitation. The first step requires the applicant to submit a preliminary application (pre-application). Pre-applications are evaluated on the evaluation criteria discussed in Section 5.

A review panel of technical experts from Federal agencies judges the pre-applications. Panel members independently review the pre-applications according to the evaluation criteria and point system. A total of 100 points is possible. As a result of this preliminary review, successful pre-applications are invited to submit a full-application package. Unsuccessful pre-applicants are removed from further consideration for funding under this solicitation. In either case, a letter of

notification is provided to each applicant.

The second step requires the applicant to submit a full-application package, which is evaluated based on the same evaluation criteria as the preliminary application. The full-application package is evaluated for technical and financial feasibility. The reviewers discuss, rank, and make recommendations to an Executive Steering Committee of Senior Federal officials.

5. Evaluation Criteria and Point System. a. Impact on National Forest System Lands Hazardous Fuel Reduction Activities: Total Points 40.

- Fire Regime Condition Class (*http://www.frcc.gov*).
- Direct, tangible benefits with and without the grant (*e.g.*, increased acres treated for hazardous fuel treatments, increased value of raw material removed from hazardous fuel treatments, reduced cost per acre, etc).
- Indirect, intangible benefit (such as air quality benefits, water quality benefits, socio-economic impacts, wildlife habitat, and watershed improvements).

b. Technical Approach Work Plan: Total Points 25

- Technical feasibility of the proposed work
- Adequacy and completeness of the proposed tasks
- Likelihood of meeting project objectives
- Reasonableness of time schedule
- Identified deliverables/tasks
- Timeliness—timeframe of the project
- Evaluation and monitoring plan

c. Financial Feasibility: Total Points 25

- Realistic budget and timeframe
- Thorough financial documentation (see description of required documentation under financial feasibility, Section 7. c.)
- Level of matching funds for the grant

d. Qualifications and Experience of Applicant: Total Points 10

- Experience, capabilities (technical and managerial)
- Demonstrated capacity

If there are no technical or financial problems for the project, full points are given. If there are minor deficiencies, which could limit success, midway points are given. If there are major deficiencies, which could render the project unsuccessful, minimum points are given.

6. Pre-Application Information. a. Pre-Application Submission. Pre-applications are required. Specific content and submission requirements for the pre-application are as follows: Each submittal must be composed of three paper copies (single-sided) of the pre-application plus one electronic copy on a CD or 3.5-inch diskette in Microsoft Word for PCs or pdf format. Paper copies of the pre-application must be on 8.5-by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. No other bindings are accepted.

b. Pre-Application Content. Assemble information in the following order: Cover page, project summary, project narrative, statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on National Forest System lands on hazardous fuels treatments, evaluation and monitoring plan, budget justification narrative, budget, and appendices. The project narrative should provide a clear description of the work to be performed. It should address the technical approach work plan under criteria 2 in Section 5. The project narrative is limited to 5 pages, excluding cover page, and does not include the budget justification, budget, or appendices.

The discussion of the impact on National Forest System lands is a critical component because these proposals are aimed at helping the Forest Service increase the number of acres treated under hazardous fuel treatments (as defined under the Healthy Forest Restoration Act, Pub. L. 108–148) and decrease the cost. Applicants should describe qualitatively and quantitatively how the project would decrease Forest Service hazardous fuel removal costs and/or increase the price one might offer for the woody biomass. Specifically, proposals should address the following:

- Fire Regime Condition Class (*http://www.frcc.gov*).
- What Forest Service is currently doing with material removed from hazardous fuel activities.
- What would be done with this material if grant is awarded.
- Anticipated outcomes and measures of success.
- Documentation of costs and benefits of project as a result of the award (see financial templates on *http://www.fpl.fs.fed.us*).
- Documentation of intangible benefits. Examples of the information requested are listed on the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants).
- Long-Term Benefits of Project: Applicant should address the length of time the benefits and impacts are anticipated (*e.g.*, project will have long-term consequences, such as equipment improvements, or a one-time benefit, such as a subsidy.)
- Expansion capability: Does the project have the potential to expand the application to additional forest treatment areas or to use more of the wood from treatments for higher valued uses?

A full description of each content item can be obtained from the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants), or by calling the telephone number in the **FOR FURTHER INFORMATION CONTACT** section, or by writing to the address in the **ADDRESSES** section of this notice.

c. Pre-Application Delivery. Pre-applications must be post marked by December 1, 2005, and received no later than 5 p.m. Central Standard Time on December 8, 2005, by the Technology Marketing Unit at the Forest Products Laboratory. Hand-delivered, e-mail, or fax applications shall not be accepted. No exceptions allowed. Please send pre-applications to the address listed in the **ADDRESSES** section of this notice.

7. Full-Application Information. USDA Forest Service will request full applications only from those applicants selected in the pre-application process.

a. Full-Application Submission. Specific content and submission requirements for the full application are as follows: Each submittal must be composed of three paper copies (single-sided) of the full application plus one electronic copy on a CD or 3.5-inch diskette in Microsoft Word for PCs or pdf format. Paper copies of the full application must be on 8.5- by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. Other bindings will not be accepted.

b. Full-Application Content. Assemble information in the following order: Cover page, project summary, project narrative, statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on National Forest System lands on hazardous fuels treatments, environmental

documentation, project work plan and timeline, social impacts, evaluation and monitoring, equipment description, budget justification, budget requirements, financial feasibility, and appendices. The project narrative should provide a clear description of the work to be undertaken and how it will be accomplished. It should address the technical approach work plan under criteria 2 listed in Section 5. The project narrative is limited to a total of 10 pages excluding cover page, budget justification, budget, appendices and financial documentation.

c. Detailed Financial Information. Detailed financial information is requested to assess the potential and the capability of the applicant. Financial information remains confidential. The financial information should provide a general overview of historical financial performance, projections (Pro Forma), and cash flow statements. Standard principles should be used for developing the required financial information. Strong applications have benefited from the use of a certified accountant to develop this information. Applicants should refer to the Technology Marketing Unit's Web site for the financial information templates, as well as an example *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants).

d. Full-Application Delivery. Full applications must be postmarked by March 1, 2006, and received no later than 5 p.m. Central Standard Time on March 8, 2006, by the Technology Marketing Unit at the Forest Products Laboratory. Hand-delivered, e-mail, or fax applications shall not be accepted. No exceptions allowed. Please send pre-applications to the address listed in the **ADDRESSES** section of this notice.

8. Appendices. The following information must be included in the appendix of the pre-application and the full-application package:

a. Letter of Support and Biomass Availability From Local USDA Forest Service District Ranger or Forest Supervisor: This letter must describe the status of National Environmental Policy Act (NEPA), acres, timeframes, available volumes, and opportunities for applicant to access these volumes.

b. Letters of Support From Partners, Individuals, or Organizations: Letters of support should be included in an appendix and are intended to display the degree of collaboration occurring between the different entities engaged in the project. These letters must include commitments of cash or in-kind services from all partners and must support the amounts listed in the budget. Each letter of support should be limited to one page in length.

c. Key Personnel Qualifications: Qualifications of the project manager should be included in an appendix. Qualifications are limited to two pages in length and should contain the following: resume, biographical sketch, references, and demonstrated ability to manage the grant.

Dated: September 26, 2005.

Kent P. Connaughton,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 05–19546 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative, Inc.; Notice of Extension of Public Scoping Comment Period

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of extension of public scoping comment period.

SUMMARY: Upon request the Rural Utilities Service (RUS) agrees to extend the public scoping comment period by 30 days prior to the preparation of an environmental impact statement (EIS) in connection to a project proposed by Associated Electric Cooperative, Inc. (AECI), with headquarters in Springfield, Missouri. A previous notice was published in the **Federal Register** on August 10, 2005 announcing RUS's intent to prepare an EIS and to hold public scoping meetings. The proposal consists of the construction and operation of a nominal 660 megawatt coal-based electrical generating plant and associated transmission facilities. A proposed and an alternate site both near the Missouri River in the northwest quadrant of Missouri have been identified by AECI. AECI is requesting RUS to provide financing for the proposal.

DATES: Send comments to RUS, at the address listed below on or before October 28, 2005.

A Site Selection Study and Macro Corridor Study Report, prepared by Associated Electric Cooperative, is available for public review on the RUS Web site *http://www.usda.gov/rus/water/ees/eis.htm*, at Associated Electric Cooperative offices at, 2814 S. Golden, Springfield, Missouri 65807, and at the following public repositories:

Cameron Public Library, 312 N. Chestnut St., Cameron, MO 64429, Phone 816/632–2311.

Concordia Library, 709 S. Main St., Concordia, MO 64020, Phone: 660/463–2277.

Hale Library & Museum, 321 Main St., Hale, MO 64643, Phone: 660/565–2617.

Mid-Continent Public Library, Kearney Branch, 100 S. Platte-Clay Way, Kearney, MO 64060–7640, Phone: 816/628–5055.

Macon Public Library, 210 N. Rutherford St., Macon, MO 63552, Phone: 660/385–3314.

Maryville Public Library, 509 N. Main St., Maryville, MO 64468, Phone 660/582–5281.

Little Dixie Regional Library, 111 N. 4th St., Moberly, MO 65270, Phone: 660/263–4426.

Oregon Public Library, 103 S. Washington St., Oregon, MO 64473, Phone: 660/446–3586.

Dulany Memorial Library, 501 S. Broadway, Salisbury, MO 65281, Phone: 660/388–5712.

Carrollton Public Library, 1 N. Folger St., Carrollton, MO 64633, Phone: 660/542–0183.

Mid-Continent Public Library, Excelsior Springs Branch, 1460 Kearney Road, Excelsior Springs, MO 64024–1746, Phone: 816/630–6721

Robertson Memorial Library, 19 W. 20th St., Higginsville, MO 64037, Phone: 660/584–2880.

Lexington Library, 1008 Main St., Lexington, MO 64067, Phone: 660/259–3071.

Marshall Public Library, 214 N. Lafayette, Marshall, MO 65340, Phone: 660/886–3391.

DeKalb County Public Library, 201 N. Polk St., Maysville, MO 64469, Phone: 816/449–5695.

Mound City Public Library, 205 E. 6th St., Mound City, MO 64470, Phone: 660/442–5700.

Ray County Library, 219 S. College St., Richmond, MO 64085, Phone: 816/470–3291.

Rolling Hills Consolidated Library, Savannah, 514 W. Main St., Savannah, MO 64485, Phone: 816/324–4569.

Boonslick Regional Library Sedalia Branch 219 W. 3rd St., Sedalia, MO 65301, Phone: 660/827–7323.

Carnegie Library 316 Massachusetts St., St. Joseph, MO 64504, Phone: 816/238–0526.

East Hills Library 502 N. Woodbine Road, Suite A, St. Joseph, MO 64506, Phone: 816/236–2136.

Washington Park Library 1821 N. Third St., St. Joseph, MO 64505, Phone: 816/232–2052.

Boonslick Regional Library 950 E. Main St., Warsaw, MO 65355, Phone: 660/438–5211.

Sedalia Public Library 311 W. Third St., Sedalia, MO 65301, Phone: 660/826–1314.

Downtown Library 927 Felix St., St. Joseph, MO 64501, Phone: 816/232–7729.

Rolling Hills Consolidated Library: Eastside 1904 N. Belt Highway, St. Joseph, MO 64506, Phone: 816/232–5479.

Sweet Springs Public Library 323 Spring St., Sweet Springs, MO 65351, Phone: 660/335–4314.

Norborne Public Library 109 East 2nd Street, Norborne, MO 64668, Voice: (816) 594–3514.

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Environmental Protection Specialist, RUS, Engineering

and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone: (202) 720–0468 or email: *stephanie.strength@usda.gov,* or Charles Means, Senior Regulatory Policy Analyst, Associated Electric Cooperative, Inc., P.O. Box 754, Springfield, Missouri 65801 or email: *cmeans@aeci.org.*

SUPPLEMENTARY INFORMATION: AECI proposes to construct and operate a nominal 660-megawatt coal-based electric generating facility at one of two sites in northwest Missouri. Its proposed site is just west of Norborne, Missouri, in Carroll County. The alternative site is west of Big Lake Missouri, along the Missouri River and just south of U.S. Highway 159 in Holt County. Fuel will be supplied to the plant at either site by rail; competing rail options will be evaluated. Construction of the project at either site will require the construction of new transmission facilities. Substation upgrades and approximately 135 miles of 345-kV transmission line would be required to connect the new plant to AECI's transmission system. For the proposed Norborne site, one line would go east to the existing Thomas Hill Substation, and one line would go south to Sedalia and then to a new substation in eastern Benton County. For the Holt County site, a double circuit 345-kV line would be required from the plant to the Fairport Substation in DeKalb County and a single circuit 345–kV line from the Fairport Substation to a new substation near Orrick, Missouri, in southwest Ray County. AECI's schedule calls for these facilities to be in commercial operation by May 2011.

Alternatives to be considered by RUS include no action, purchased power, renewable energy sources, distributed generation, and alternative site locations.

Four public scoping meetings in an open-house format followed by a discussion period were held: August 22, 2005, Oregon, Missouri, at T.J. Hall Community Center, 104 S. Main; August 23, 2005, Sedalia, Missouri at Missouri Electric Cooperatives Building, State Fair Grounds, 2503 W. 16th St.; August 24, 2005, Salisbury, Missouri at Knights of Columbus Building, 311 E. Patterson Ave.; August 25, 2005, Norborne, Missouri, at Goppert Community Building, 201 S. Pine.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of a Draft EIS. The Draft EIS will be available for review and comment for 45 days. A Final EIS will then be prepared that considers all comments received. The Final EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft and Final EIS and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR Part 1794).

Dated: September 23, 2005.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff, Water and Environmental Programs, Rural Utilities Service.

[FR Doc. 05–19578 Filed 9–29–05; 8:45 am]

BILLING CODE 3410–15–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind Or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must Be Received On Or Before: October 30, 2005.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Mat, Floor Rubber
NSN: 2540–01–298–8449—61″ x 36″
fabricated mat, reinforced with steel wire
NPA: Hope Haven, Inc., Rock Valley, Iowa
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio

Services

Service Type/Location: Appliance Cleaning Service, Department of Homeland Security, National Records Center, 150 Space Center Loop, Lee's Summit, Missouri
NPA: Independence and Blue Springs Industries, Inc., Independence, Missouri
Contracting Activity: DHS—Burlington Contracting Office, South Burlington, Vermont

Service Type/Location: Custodial, Warehousing, Shelf Stocking, Defense Commissary Agency, Hurlburt Field Commissary, Fort Walton Beach, Florida
NPA: Brevard Achievement Center, Inc., Rockledge, Florida

Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia
Service Type/Location: Hazmart Support Services, Building #2250, Fort George G. Meade, Maryland
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland
Contracting Activity: Department of the Army, Director of Contracting, Fort Meade, Maryland
Service Type/Location: Janitorial/Custodial, USDA, Animal and Plant Health Inspection Service/PPQ, Asian Longhorn Beetle Project 3920 N. Rockwell, Chicago, Illinois
NPA: Habilitative Systems, Inc., Chicago, Illinois
Contracting Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, Minnesota

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type Location: Base Supply Center, Bangor Naval Submarine Base, Bangor, Washington
NPA: Peninsula Services, Bremerton, Washington
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington
Service Type/Location: Operation of SERVEMART, Everett Naval Station, Washington
NPA: Peninsula Services, Bremerton, Washington
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington
Service Type/Location: Base Supply Center, Whidbey Island Naval Air Station Oak Harbor, Washington
NPA: Peninsula Services, Bremerton, Washington
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5336 Filed 9–29–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind Or Severely Disabled.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: October 30, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On July 29, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 43840) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Supply Center, Maxwell Air Force Base, Alabama,
NPA: Alabama Industries for the Blind, Talladega, Alabama
Contracting Activity: 42nd Contracting Squadron/CC, Maxwell AFB, Alabama

Deletions

On July 29, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 43840/41) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Base Supply Center, Naval Supply Center, Puget Sound, Building 467, Bremerton, Washington
NPA: Peninsula Services, Bremerton, Washington
Contracting Activity: Fleet and Industrial Supply Center, Puget Sound,

Washington
Service Type/Location: Janitorial/Custodial, Federal Warehouse, 2760 NW. Yeon Avenue, Portland, Oregon
NPA: Portland Habilitation Center, Inc., Portland, Oregon
Contracting Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Custodial, Ross Complex, 5411 NE. Highway 99, Vancouver, Washington
NPA: Portland Habilitation Center, Inc., Portland, Oregon
Contracting Activity: Department of Energy, Washington, DC
Service Type/Location: Janitorial/Custodial, U.S. Federal Building and Post Office, 256 Warner Milne Road, Oregon City, Oregon
NPA: Portland Habilitation Center, Inc., Portland, Oregon
Contracting Activity: General Services Administration
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, 1709 Jackson Street, Omaha, Nebraska
NPA: Goodwill Specialty Services, Inc., Omaha, Nebraska
Contracting Activity: General Services Administration

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5337 Filed 9–29–05; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, October 7, 2005, 9:30 a.m.

PLACE: Rayburn House Office Building, Room 2226, Washington, DC 20515.

Agenda

I. Approval of Agenda
II. Approval of Minutes of September 16, 2005 Meeting
III. Announcements
IV. Commission Briefing: The Voting Rights Act
- Introductory Remarks by Chairman
- Speakers' Presentations
- Questions by Commissioners and Staff Director

V. Staff Director's Report
VI. State Advisory Committee Issues
- Working Group on SAC Reform
- Elementary and Secondary School Desegregation Project

VII. Management and Operations
- Commission Meeting Dates for Calendar Year 2006
- Report on John G. Roberts, Jr., Civil Rights Record
- September 15th Report to Congress on Commission Reforms

VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Terri Dickerson, Press and Communications (202) 376–8582.

Christopher Byrnes,

Acting Deputy General Counsel.

[FR Doc. 05–19656 Filed 9–27–05; 4:30 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce

ACTION: Notice of Membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of twenty-five members to serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of members to the NOAA PRB will be for a period of 24 months.

EFFECTIVE DATE: The effective date of service of the twenty-five appointees to the NOAA Performance Review Board is October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Claudia McMahon, Executive Resources Program Manager, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 204).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB are set forth below (all are NOAA officials except Tyra Smith, Director, Human Resources, Bureau of the Census, Department of Commerce; William J. Fleming, Deputy Director for Human Resources Management, Office of Human Resources Management, Department of Commerce:

John E. Oliver, Jr.: Deputy Assistant Administrator for Operations, National Marine Fisheries Service
John L. Hayes: Deputy Assistant Administrator for Oceanic and Atmospheric Research, Office of Oceanic and Atmospheric Research
Louisa Koch: Director, Office of Education, Office of Deputy Under Secretary
John E. Jones, Jr.: Deputy Assistant Administrator for Weather Services, National Weather Service
Charles Baker: Acting Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service
Bonnie Morehouse: Director, Program Analysis & Evaluation, Office of NOAA Finance and Administration
Daniel J. Basta: Director, Office of National Marine Sanctuaries, National Ocean Service
William J. Brennan: Deputy Assistant Secretary for International Affairs, Office of International Affairs
Maureen Wylie: Chief Financial Officer, Office of the Chief Financial Officer
Tyra Smith: Director, Human Resources, Bureau of the Census
David Kennedy: Director, Office of Response and Restoration, National Ocean Service
Ron Baird: Director, National Sea Grant College Program, Office of Oceanic and Atmospheric Research
Helen M. Hurcombe: Director, Acquisition and Grants Office, Office of Acquisition and Grants
Ants Leetmaa: Director, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Gregory Mandt: Director, Office of Climate, Water and Weather Services, National Weather Service
Louis W. Uccellini: Director, National Centers for Environmental Prediction, National Weather Service
Rebecca Lent: Director, Office of International Affairs, National Marine Fisheries Service
Steven Murawski: Director of Scientific Programs and Chief Science Advisor, National Marine Fisheries Service
William Broglie: Chief Administrative Officer, Office of the Chief Administrative Officer
Kathleen Kelly: Director, Office of Satellite Operations, National Environmental Satellite, Data and Information Service
Jordan P. St. John: Director, Office of Public and Constituent Affairs, Office fo Public and Constituent Affairs, NOAA
Timothy R.E. Keeney: Deputy Assistant Secretary of Commerce for Oceans and Atmosphere, Office of the Deputy Under Secretary
Steven Gallagher: Director, Budget Office, Office of the Chief Financial Officer
Donald E. Hout: Director, Ocean and Coastal Resource Management, National Ocean Service

William J. Fleming: Deputy Director for Human Resources Management, Department of Commerce

Dated: September 23, 2005.

Conrad C. Lautenbacher, Jr.,

Vice Admiral, U.S. Navy (Ret.), Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 05–19549 Filed 9–29–05; 8:45 am]

BILLING CODE 3510–12–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 20 October 2005 at 9 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 26 September 2005.

Thomas Luebke,

Secretary.

[FR Doc. 05–19560 Filed 9–29–05; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Notice of the Defense Acquisition Performance Assessment Project Meetings

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Defense Acquisition Performance Assessment (DAPA) Project will hold a public meeting at the Anteon Conference Center, 1560 Wilson Blvd., Suite 400, Arlington, VA 22209, on October 29, 2005 from 9 a.m. to Noon.

Purpose: The Panel will meet during a public session on October 19, 2005 from 9 a.m. to Noon. Any interested citizens are encouraged to attend the meetings open to the public, subject to the availability of space.

Date: October 19, 2005.

Time: 9 a.m. to Noon.

Location: Anteon Conference Center, 1560 Wilson Blvd., Suite 400, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit comments must contact: Lt Col Rene Bergeron, Assistant Director of Staff, Defense Acquisition Performance Assessment Project, 1670 Air Force Pentagon, Rm 3A873, Washington, DC 20310–1010. Telephone: (703) 697–3420, Voice: (703) 697–3420, Fax: (703) 697–3511, *rene.bergeron@pentagon.af.mil*.

Interested persons may submit a written statement for consideration by the Panel, preferably via e-mail. Statements to the Panel must be directed to the point of contact listed above.

Dated: September 26, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–19572 Filed 9–29–05; 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 Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 31, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 27, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program Deferment Request Forms.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 737,209.

Burden Hours: 147,443.

Abstract: These forms serve as the means by which the U.S. Department of Education collects the information needed to determine whether a Direct Loan borrower qualifies for a loan deferment.

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 2834. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify

the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–19573 Filed 9–29–05; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Striving Readers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2005; Modification.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.371A.

SUMMARY: On August 15, 2005, the Department published in the **Federal Register** (70 FR 47816–47821) a notice inviting applications for new awards for FY 2005 for the Striving Readers program. In the notice inviting applications, we established certain eligibility requirements and two absolute priorities for the Striving Readers competition. We are now modifying the eligibility requirements to expand who may apply for a grant under this competition and modifying Priority Two—Comprehensive Reading Initiative Components—to clarify further the requirements under this priority.

DATES: All dates and deadlines published in the notice inviting applications remain the same.

FOR FURTHER INFORMATION CONTACT: Kathryn Doherty, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W309, Washington, DC 20202–6132. Telephone: (202) 205–6272 or by e-mail: *StrivingReaders@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to the publication on August 15, 2005 of the notice inviting applications for the Striving Readers competition, the Department conducted a series of teleconference briefings with more than 500 potential applicants to discuss the purposes of the competition, the funding priorities, the selection criteria, and the competition process. Based on questions and comments that we received during these teleconferences, we are modifying the notice inviting applications to expand who may apply for a grant under this competition and also modifying the Statement of Priority Two—Comprehensive Reading Initiative Components.

Modification of Applicant Eligibility Requirements

In the original notice inviting applications for the Striving Readers competition, we stated that eligible applicants were local educational agencies (LEAs) that—

1. Are eligible to receive funds under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), pursuant to section 1113 of the ESEA, and

2. Serve students in one or more grades in grades 6 through 12.

We also indicated that eligible LEAS may apply individually or, with other eligible LEAs, or in partnership with one or more of the following entities:

- State educational agencies (SEAs),
- Intermediate service agencies,
- Public or private institutions of higher education, and
- Public or private organizations with expertise in adolescent literacy and/or rigorous evaluation.

Finally, the original notice provided that in any partnership, the fiscal agent must be the eligible LEA.

In the teleconferences, a number of LEAs and some SEAs expressed interest in working with consortia of several school districts and having the SEA apply for the grant and serve as the fiscal agent for the grant. They requested that the eligibility requirements be modified to permit an SEA to partner with, and apply on behalf of, LEAs that meet the eligibility requirements described in the original notice inviting applications. We believe that a modification is warranted and are changing the eligibility requirements as follows:

Eligible Applicants: The following entities are eligible to apply for funding under this competition:

1. LEAs that—

(a) Are eligible to receive funds under Part A of Title I of the ESEA, pursuant to section 1113 of the ESEA, and

(b) Serve students in one or more grades in grades 6 through 12.

Eligible LEAs may apply individually, with other eligible LEAs, or in partnership with one or more of the following entities:

- SEAs,
- Intermediate service agencies,
- Public or private institutions of higher education, and
- Public or private organizations with expertise in adolescent literacy and/or rigorous evaluation.

2. SEAs on behalf of one or more LEAs that meet the requirements of paragraph 1.

SEAs must apply on behalf of one or more eligible LEAs and may also partner with one or more of the following entities:

- Intermediate service agencies,
- Public or private institutions of higher education, and
- Public or private organizations with expertise in adolescent literacy and/or rigorous evaluation.

For any application, the fiscal agent must be an eligible LEA or an SEA.

Modification of Priority Two

In the original notice inviting applications for the Striving Readers competition, we also established an absolute priority (Priority Two—Comprehensive Reading Initiative Components) that set forth required activities that must be conducted by all Striving Readers grantees. Under this priority, Striving Readers grantees must use funds awarded under the competition to support a comprehensive reading initiative that includes three essential components: (1) School-level strategies designed to increase reading achievement throughout the curriculum; (2) an intensive, targeted intervention for some or all struggling readers (*i.e.*, students who read at least two years below grade level, including limited English proficient students and students with disabilities); and (3) a rigorous project evaluation that includes an experimental research evaluation of the intensive, targeted intervention for struggling readers.

Based on our telephone conferences, we are modifying this absolute priority to make several clarifications.

First, we recognize that there are many different school configurations and want to clarify that Striving Reading services may be carried out in schools that contain grades other than grades 6 through 12 (for example, kindergarten through grade 8 schools, grades 5 through 8 schools, or kindergarten

through grade 12 schools). Second, we want to make it clear that under this priority, grantees must implement *both* school-level strategies to enhance reading achievement and intensive, targeted interventions, and these strategies and interventions must be directed at students in grades 6 and above only. Finally, we want to clarify when grantees must begin to provide these services.

The school-level strategies must focus on improving literacy for the entire grade span/student population in the grades 6 through 12 that are included in the school and be implemented in each of these grades no later than the start of the 2006–2007 school year. In a kindergarten through grade 12 school, for example, the school-level strategies must be designed to enhance the literacy skills of all students in grades 6 through 12. In a high school with grades 9 through 12, the school-level strategies must encompass all of the grades in the school. Further, the school-level strategies must be provided in all of the covered grade levels (*i.e.*, grades 6 through 12) during each year of the project, beginning no later than the start of the 2006–2007 school year.

The targeted interventions must be for some or all students in grades 6 through 12 who are reading at least two years below grade level. In schools that include grades kindergarten through 8, for example, the targeted intervention must be targeted at struggling readers in one or more grades 6 through 8. However, the grantee would not have to provide targeted interventions to all struggling readers in grades 6 through 8. In this example, the targeted intervention must focus on all or some struggling readers either in a given grade level or in more than one grade in grades 6 through 8. Furthermore, the grantee must provide intensive, targeted intervention strategies during each year of the project beginning no later than the start of the 2006–2007 school year.

Statement of Priority Two—Comprehensive Reading Initiative Components

The applicant, if awarded a grant under this program, will use the funds to support a comprehensive reading initiative that includes the following components:

1. School-level strategies designed to increase reading achievement for students by integrating enhanced literacy instruction throughout the curriculum and the entire school. These strategies must include, at a minimum, a needs assessment, professional development, and a process for monitoring student performance. The school-level strategies must focus on improving literacy for the entire grade span/student population in the grades 6 through 12 that are included in the school and be implemented in each of these grades during each year of the project period beginning no later than the start of the 2006–2007 school year.

2. An intensive, targeted intervention for struggling readers (*i.e.*, students who read at least two years below grade level, including limited English proficient students and students with disabilities). The intervention must include, at a minimum, assessments to identify struggling readers, a supplementary literacy intervention designed to accelerate the development of literacy skills for these readers, professional development for their teachers, and a process for monitoring student progress that includes the administration of student assessments. The intensive, targeted interventions must be for some or all struggling readers in one or more grades 6 through 12. The grantee must provide intensive, targeted intervention strategies during each year of the project period beginning no later than the start of the 2006–2007 school year.

3. A project evaluation that includes—

(a) A rigorous experimental research evaluation of the intensive, targeted intervention for struggling readers. The evaluation of the intensive, targeted intervention must be conducted by an independent evaluator and must include a randomized control trial; *and*

(b) A rigorous evaluation of the school-level strategies designed to increase reading achievement for students by integrating enhanced literacy instruction throughout the curriculum and the school. The evaluation of the school-level strategies must be conducted by an independent evaluator and may, but need not, include a randomized control trial.

To meet this priority, applicants must demonstrate that they have allocated sufficient program and other funds to carry out a high-quality evaluation of the proposed Striving Readers project. Applicants also will need to include a sufficient number of schools and students to support an experimental evaluation design of the targeted intervention in one or more grades in grades 6 through 12.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on eligibility requirements and priorities. Section 437(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 1502 of the Elementary and Secondary Education Act of 1965, as amended, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the modified eligibility requirements and priority in this notice under section 437(d)(1). These modified eligibility requirements and priority will apply to the FY 2005 grant competition and any subsequent awards we make based on the list of unfunded applications from this competition.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

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*.

Program Authority: 20 U.S.C. 6492.

Dated: September 27, 2005.

Henry Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–19618 Filed 9–29–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plans Pursuant to the Help America Vote Act

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State

plans previously submitted by Pennsylvania.

DATES: This notice is effective upon September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual States at the address listed below.

SUPPLEMENTARY INFORMATION:

On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254 (a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. EAC published Pennsylvania's first update to its State plan in the **Federal Register** on September 30, 2004. 69 FR 58630.

The current submission from Pennsylvania addresses three material changes to the administration of their previously submitted State plans. The document updates information on the State's approach to voter verified paper ballots and voter verified paper audit trails, accounts for the distribution of interest earned on federal funds, and clarifies funding available to counties that must replace their voting systems. The document also provides information on how the State succeeded in carrying out the previous State plan, in accordance with HAVA section 254(a)(12).

Upon the expiration of thirty days from September 30, 2005, Pennsylvania will be eligible to implement the material changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC notes that the plan published herein has already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into the revising the State plans and encourages further public comment, in writing, to the State election official of the individual States listed below.

Chief State Election Officials

Pennsylvania

The Honorable Pedro A. Cortés, Secretary of the Commonwealth, Department of State, 302 North Office Building, Harrisburg, PA 17120, Phone: 717–787–6458, Fax: 717–787–1734, E-mail: *patriwili@state.pa.us.*

Thank you for your interest in improving the voting process in America.

Dated: September 23, 2005.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
302 North Office Building
Harrisburg, PA 17120

PEDRO A. CORTÉS
Secretary of the Commonwealth

Telephone: (717) 787-8727
Fax: (717) 787-1734
Website: www.dos.state.pa.us

September 15, 2005

Dear Members of the Commission:

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the following new pages that will comprise Elements 6, 10 and 12 of the State Plan of Commonwealth of Pennsylvania for the 2006 Fiscal Year. These new pages, together with non-substantive changes that we have made, will constitute the Commonwealth of Pennsylvania's HAVA State Plan for Fiscal Year 2005.

As required by section 254(a)(12) of HAVA, Element 12, as amended, describes the material changes that Pennsylvania has made to the State Plan filed in 2003. Specifically, Element 12 contains descriptions of the amended versions of Elements 6 and 10 and lists the progress that the Commonwealth has made with regard to the State Plan that the Commonwealth filed with the Federal Election Commission on July 31, 2003.

Please note that non-substantive changes to the Pennsylvania State Plan can be found throughout every element of the Pennsylvania State Plan (non-substantive changes include corrections to spelling, punctuation, etc.). After consulting with EAC staff, the Commonwealth has elected not to include those changes for publication in the *Federal Register* as unnecessary under HAVA. Instead, we would direct the EAC and members of the public to the Pennsylvania Department of State's HAVA website (www.hava.state.pa.us) to view and copy the complete Pennsylvania State Plan as the Commonwealth has amended it.

The 2005 Amendments to the State Plan of Commonwealth of Pennsylvania were developed in accordance with section 255 of HAVA and the requirements for public notice and comment prescribed by section 256 of HAVA.

On behalf of the Commonwealth of Pennsylvania, I thank the Commission for its assistance. I look forward to our continued collaboration to improve the administration of elections in Pennsylvania.

Very truly yours,

Pedro A. Cortés

Pedro A. Cortés

Commonwealth of Pennsylvania

State Plan

AS AMENDED

As Required by Public Law 107-252,
The Help America Vote Act of 2002

September 15, 2005

Edward G. Rendell, Governor

Pedro A. Cortés, Secretary of the Commonwealth

TABLE OF CONTENTS

STATE PLAN ELEMENT 6

The State's proposed budget for activities under Part II of HAVA, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

HAVA Section 254(a)(6) (42 U.S.C. § 15404(a)(6))

2005 -- All previous information contained in this Chapter is deleted and superseded by the following:

Section 254(a)(6) of HAVA requires the Commonwealth to describe in its State Plan a budget for its proposed activities and anticipated expenditures for those activities.

The reform effort that HAVA represents is extensive and far-reaching. But its success is dependent on Federal funding. Pennsylvania's State Plan presumes full funding according to the timetable contained in section 257(a) of HAVA. While Congress has funded the program for Federal Fiscal Year (FFY) 2003 and 2004 at a level authorized by HAVA, it did not do so for FFY 2005. It is essential that Congress and the President fund the amounts authorized by HAVA. If full funding is not forthcoming according to the funding amounts authorized by HAVA, the success of this plan will be jeopardized.

The General Services Administration has released funds authorized by Title I of HAVA that, combined under sections 101 and 102, amount to $34,240,120.00. In addition, Pennsylvania received funds from the EAC known as Title II requirements payments in the amount of $100,578,829.00. ($35,992,863.00 for FFY 2003 and $64,585,966.00 for FFY 2004.) If fully funded for FFY 2005, Pennsylvania would have received an additional $25,000,000.00 (estimated).

Consistent with section 253(b)(5) of HAVA, the funds appropriated by the General Assembly and expended by the Commonwealth for the SURE system enacted in January 2002 satisfy the 5% State match required by HAVA. The 5% match requirement is calculated as 5% of the combined State and Federal expenditure for HAVA activities. This calculation requires a multiplier of 0.0526 of the actual and projected Federal funds and is estimated to be $8,445,606.00 – well under the amount already appropriated by the Commonwealth.

Distribution of Federal Funds

The Commonwealth plans to distribute Federal dollars using a 72/28 split of Federal monies and earned interest. Counties would receive 72% of the funding; the Commonwealth government would receive 28%.

Section 101 Funds: Section 101 funds and corresponding earned interest will be split between the counties and the Commonwealth. Twenty-six percent (26%) will be distributed to the counties and 74% for the State government. See Element 10 for more information.

Section 102 Funds: Qualifying counties would receive 100% of the Federal funds provided and corresponding earned interest under section 102 of HAVA. These funds would be distributed to the 26 counties using lever voting machines in 6,143 precincts at the November 2000 election and to the 11 counties using punch card systems (1,030 precincts) to purchase HAVA compliant DREs or other HAVA compliant systems. Funds received: $22,916,952.00.

Title II Funds: Of the Federal funds received as requirements payments under Title II of HAVA and corresponding earned interest, 70.8% would be set aside for the counties; and 29.2% would be reserved for the Commonwealth government.

County Grant Funds: Title II monies will be distributed via county grants and will be targeted for three major functions: (1) polling place accessibility; (2) voting system procurement; and (3) other Title III requirements.

Funds for polling place accessibility will be distributed on an as needed basis upon application by a county.

Regarding voting system procurement, the Commonwealth has structured its funding programs to encourage county authorities to purchase the same type of a single HAVA compliant precinct count electronic voting system that can be used by all voters, including individuals with disabilities. The Commonwealth will make Title II Federal funds available to counties that purchase a single HAVA compliant precinct count electronic voting system, and will provide up to 100% of the cost of purchasing such systems, but it will fund no more than $8,000.00 per precinct.

This reimbursement also applies to counties that have incurred costs on or after January 1, 2001, to replace punch card or lever voting systems in qualifying precincts. If a county purchasing the HAVA compliant system has received or will receive Title I funds provided by section 102 of HAVA, the amount of the Title II reimbursement for voting system purchases would be reduced by the dollar amount received under section 102. Counties that purchase a single HAVA compliant precinct count electronic voting system may use up to 10% of the total dollars received for voting system procurement for other Title III requirements provided that all such expenditures must be substantiated.

Counties that choose not to purchase a single HAVA compliant precinct count electronic voting system would receive up to 50% of the cost of purchasing a new voting system, but not more than $4,000.00 per precinct. If a county does not purchase the system for individuals with

disabilities as it does for all voters, and has received Title I funds under section 102 of HAVA, the amount of the Title II reimbursement for the voting system purchase would be reduced by the dollar amount received under section 102. The Commonwealth encourages the procurement of a single HAVA complaint precinct count electronic voting system for all voters because it would be the most efficient use of Federal, State and local funds.

Counties that used DRE's in the November 2000 General Election and those that purchased a DRE voting system after the November 2000 General Election must upgrade their DRE's to comply with the requirements of HAVA. To assist those counties, the Commonwealth will provide100% reimbursement for such upgrades necessary to make the DRE HAVA compliant but no more than $3,000.00 per precinct. In order to receive the federal funds, the DRE used must be deemed to be HAVA compliant by the Secretary of the Commonwealth in accordance with the Election Code. Counties that used lever voting machines in 2000 but have since implemented a DRE voting system will, if such DRE is deemed HAVA compliant, qualify for the reimbursement under Section 102. All money not used by the counties for the procurement of voting systems will be combined with the funds to be used for other Title III requirements and distributed accordingly. See Element I for additional information on voting systems.

The remaining portion of the county Title II monies appropriated for FFY 2003 and FFY 2004 will be apportioned to each county based on the counties proportion of the Commonwealth's voting age population provided that no county will receive less than $20,000. Counties whose proportionate share would fall under the minimum would not qualify for additional funds under Title II for funds already appropriated to the Commonwealth but will qualify for additional Title II dollars further appropriated by Congress using the voting age population formula. This portion of the funds can be used to fulfill Title III requirements, including the purchase of voting systems, voter education, poll worker training, and polling place accessibility.

The available funds for voting system procurement and other Title III requirements will be distributed to counties based on the filing of a County Plan and Agreement.

Funds to be Used by the Commonwealth Government: The Commonwealth will receive 29.2% of the Title II monies (requirements payments) and corresponding interest. These monies would be put into a separate account and used to implement HAVA requirements, including the statewide voter registration database, voter education programs, poll-worker training and administrative expenses.

The chart on page 39 lists activities and costs of HAVA to be implemented in Pennsylvania using Title II monies for each activity outlined in this plan. The data provided in the chart reflects Federal dollars actually received as of the date of this State Plan update.

A. ACTIVITY	B. ALLOTMENTS OF DOLLARS APPROPRIATED 2003/2004*	C. PER CENT OF TITLE II DOLLARS	D. PURPOSE
COUNTY			
County Grant Fund: Voting Systems	$53,179,205.94	N/A 52.87%	For the purchase of new voting equipment.
Polling Place Accessibility	$2,344,140.00	2.33%	To bring polling places standards up to meet the Federal law.
County Grant Fund for Other Title II Requirements	$15,720,414.06	15.63%	To be used for Title III requirements of HAVA in compliance thereof.
COMMONWEALTH			
Voter Registration Database	$13,127,185.00	13.05%	Development of statewide voter registration list
Voter Education/Voter Outreach	$5,339,207.00	5.31%	To educate voters re: election procedure, increase voter participation, and make available additional voter registration applications
Poll Worker Training	$1,953,450.00	1.94%	To train all poll workers in the uniform procedures to be used at the polling places on Election Day.
Election Officer Training	$ 312,552.00	.31%	Train State and county officials in all Federal and State procedures related to elections
Alternative Language Accessibility	$2,734,830.00	2.72%	To make election materials and information available to jurisdictions having alternative language minorities
Administrative Expenses/Implementation Costs	$3,125,520.00	3.11%	For Commonwealth personnel to administer HAVA and other costs for implementation
Provisional Voter Hotline/Website	$ 195,345.00	.19%	To establish the HAVA required Website and toll free line
Miscellaneous/State Plan Expenses	$ 2,546,979.00	2.53%	For grants to independent groups ($500,000); unforeseen costs in implementing HAVA; and development of the State Plan

*Dollar amounts do not include interest.

The efficient allocation and expenditure of Title I and Title II funds is vitally important to the overall success of providing both the counties and the Commonwealth with the maximum resources available both to implement the requirements of HAVA and to continue to improve the administration of elections for Commonwealth voters.

STATE PLAN ELEMENT 8 *How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.*

HAVA Section 254(a)(8) (42 U.S.C. § 15404(a)(8)).

Section 254(a)(8) of HAVA requires the Commonwealth to state in its State Plan how it plans to adopt performance goals and measures to be used by the Commonwealth to determine Pennsylvania's success in carrying out the Commonwealth's State Plan.

One of the biggest threats to the success of an initiative is the failure to follow through on progress and to be able to adjust plans as projects move forward and challenges are faced. The Commonwealth has taken a two-pronged approach to ensure that all involved are committed to improving the administration of elections for Pennsylvania citizens. The first prong involves monitoring the county agreements, and the second prong focuses upon the Commonwealth's continued self-assessment of its progress at the State level.

THE HAVA ADMINISTRATOR

The Commonwealth has assigned an employee of the Department of State the responsibility to oversee the HAVA project. This employee, the HAVA Administrator, is responsible for monitoring the progress of the counties, overseeing the county agreements, and keeping account of the status of the requirements payment fund. The HAVA Administrator has met regularly with the Secretary of the Commonwealth and the Commissioner of the Bureau of Commissions, Elections & Legislation as to the status of the Commonwealth's compliance with HAVA and the various projects established by the counties. In addition, the State Plan as amended, serves as an annual report from the HAVA Administrator to the public.

MONITORING THE COUNTY AGREEMENTS

Through the reporting requirements included in the proposed county agreements, the Department of State should be able to monitor the progress of the county projects and the usage of the funding. The Commonwealth plans to hold the counties responsible for their expenditures of the funding. The Department of State will assist the counties to the extent possible to ensure project success.

MONITORING OF DEPARTMENT ACTIVITIES

While monitoring the county use of the funds is important, the Department of State also plans constantly to review its progress from two perspectives: the disbursement of funding and its own efforts in meeting the requirements of HAVA.

Throughout the implementation stage of HAVA, the Department has informed all interested parties of the Commonwealth's progress and attempted to address any concerns expressed by members of the advisory committees. Beginning at the end of calendar year 2004, the Department will issue an annual report of the Commonwealth's progress with respect to HAVA and address any concerns that might require action by the Governor or the General Assembly. Through this report, the Secretary of the Commonwealth will be able to detail potential changes to the Commonwealth's State Plan in advance of beginning the formal process for modifying the State plan under HAVA.

PERFORMANCE GOALS AND MEASURES

The Department of State has established performance goals and measurement processes to monitor the progress under the State Plan. This will better enable the HAVA Administrator to measure progress in achieving the goals. The Department of State will continuously monitor and review the performance of each initiative that is funded by requirements payment to determine progress.

The planned performance goals listed below are intended to apply to elections that occur during the year identified. The planned performance goals include:

a. Elimination of lever voting machines and punch card electronic voting systems

Timetable: January 1, 2006

Criteria: Replacement of lever voting machines and punch card electronic voting equipment in compliance with Title III requirements for the 24 counties that utilized lever voting machines in the November 2000 Election that still use them and the 11 counties that used punch card electronic systems in the 2000 election.

Responsible Official: The county boards of elections, with the cooperation and assistance of the Secretary of the Commonwealth.

Update: For an update of the Commonwealth's progress, see page 55.

b. Implementation of the Statewide Uniform Registry of Electors

Timetable: January 1, 2006

Criteria: Implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration list and database.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county voter registration office.

Update: For an update of the Commonwealth's progress, see page 59.

c. Polling place accessibility

Timetable: January 1, 2004

Criteria: Survey all polling places in the Commonwealth to determine accessibility under the Federal Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973gg *et seq.*) and work to increase the number of accessible polling places in Pennsylvania.

Responsible Official: The county boards of elections, with the cooperation and assistance of the Secretary of the Commonwealth.

Update: For an update of the Commonwealth's progress, see page 56.

d. Voter education program

Timetable: January 1, 2004

Criteria: Establishment and implementation of a voter education program providing voters with information relative to voting procedures, voting identification, complaint procedures, provisional ballots and voting information specific to each type of voting system that clearly explains to the voter how to correctly cast a ballot; how to correct an error; how to obtain a replacement ballot; and the effect of casting multiple votes for an office.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county board of elections.

Update: For an update of the Commonwealth's progress, see page 60.

e. Poll Worker/Election Officer Training

Timetable: January 1, 2006

Criteria: Establishment and implementation of a training program for district election and county election officials to insure that procedures used in polling places are standardized across the Commonwealth to the greatest extent possible.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county board of elections.

Update: For an update of the Commonwealth's progress, see page 62.

f. Accessibility for individuals with disabilities

Timetable: January 1, 2006

Criteria: Purchase at least one voting system that is usable by individuals with a disability in each polling place in the State and adequate placement of this equipment throughout the 67 counties.

Responsible Official: The Secretary of Commonwealth, with the cooperation of each county board of elections.

g. Alternative Language Accessibility

Timetable: January 1, 2004

Criteria: Initiate an outreach program to alternative language communities to apprise them of their voting rights and the correct voting procedures and offer alternative language services to the counties requesting them.

Responsible Official: The Secretary of the Commonwealth, with the cooperation of each county board of elections.

Update: For an update of the Commonwealth's progress, see page 56.

h. Provisional Voting

Timetable: January 1, 2004

Criteria: Implementation of a free access system in the Department so that the voters can determine if their provisional ballot was counted.

Responsible Official: Secretary of the Commonwealth, with the cooperation of each county board of elections.

Update: For an update of the Commonwealth's progress, see page 57.

The Department plans to issue periodic progress reports on the status of implementing the performance goals. After January 1, 2006, when all of the deadlines have passed, the Department plans to produce a report on how the performance goals have been met.

STATE PLAN ELEMENT 10 *If the State received any payment under Title I of HAVA, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.*

HAVA Section 254(a)(10) (42 U.S.C. § 15404(a)(10)).

2005 -- All previous information contained in this Chapter is deleted and superceded by the following:

Section 254(a)(10) of HAVA requires the Commonwealth to describe in its State Plan how funds that it has received under sections 101 or 102 of HAVA (relating to payments to States for activities to improve administration of elections and replacement of punch card and lever voting machines) will affect the activities that the Commonwealth plans to carry out under the State Plan. Section 254(a)(10) also requires the Commonwealth to state in its State Plan the amount of funds available for its proposed activities.

Pennsylvania received $34,240,120.00 in Title I funding -- $11,323,168.00 under to Section 101 and $22,916,952.00 under section 102. Because counties have not yet been able to purchase a HAVA compliant voting system no dollars have been distributed to the counties under section 102. However, using section 101 dollars, Pennsylvania continues to make progress in implementing other HAVA requirements, including voter education, polling place accessibility, alternative language accessibility, provisional balloting, voter identification, and the statewide voter registration database. In particular, Pennsylvania has made progress in implementing a statewide voter registration database known as the Statewide Uniform Registry of Electors, or SURE. To date, 56 of 67 counties have been connected to the SURE system.

The chart below represents the expenditures made from Section 101 funds as of the close of State Fiscal Year 2004-2005.

Section 101 Funding	***Actual Expenditures (as of June 30, 2005)***
Polling Place Accessibility	$ 0.00
County Grant Fund	$ 0.00
Statewide Voter Registration Database	$ 4,011,964.53
Voter Education	$ 1,235,906.77
Poll worker Training	$ 21,370.92
County Election Official Training	$ 27,819.46
Alternative Language Assistance	$ 8,250.95
Provisional Voter Hotline/Website	$ 224,424.82
Administrative Expenses/Complaint Line	$ 814,966.25
Miscellaneous/State Plan Expenses	$ 250,052.08
TOTAL:	$ 6,509,460.04

There is $4,813,707.96 remaining in section 101 funds, $3,000,000.00 of which is earmarked for counties. Of this, $1,000,000.00 is earmarked for Polling Place Accessibility and $2,000,000.00 is to be made available to the County Grant Fund. The balance of the section 101 money will be used to fund the requirements of Title II as indicated in the State Plan filed August 1, 2003 and advertised in the *Federal Register* on March 24, 2004.

The chart of expenditures appearing above differs somewhat from expenditures contained on page 51 of the amended State Plan filed in August 2004. The dollar amounts more closely align with those originally allotted. The original allotments were established using Section 101 funds in order to provide State and county governments the means to begin implementing HAVA. It was planned that Title II funding would be used to increase the amount of dollars available to meet Title III requirements. However, when Title II dollars were not forthcoming in a timely manner, commitments came due and had to be paid from existing Federal dollars (Section 101 funds).

Please see the corresponding chart in the amended State Plan (2004). However, since last year the Department has made adjustments between Section 101 expenditures and the Title II expenditures to reflect those authorized by the State Plan. This chart reflects these adjustments. The total dollars that the State Plan originally allocated for each requirement are not affected by this adjustment.

STATE PLAN ELEMENT 12 *In the case of a State with a State plan in effect under Subtitle D (relating to election assistance) of Title II of HAVA during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for the previous fiscal year.*

HAVA Section 254(a)(12) (42 U.S.C. § 15404(a)(12)).

All previous information contained in this Element is superseded by the following, which constitutes a cumulative update of the Commonwealth's progress as it pertains to the "Commonwealth's Planned Actions" found throughout this State Plan. In addition, this Amendment contains three material changes to the State Plan as follows:

1. *Provides an update on the usage of voter verified paper ballots and voter verified paper audit trails (VVPAT)*
2. *Clarifies the distribution of interest earned on federal funds.*
3. *Clarifies funding available to counties who must replace their voting systems.*

The Pennsylvania Department of State's HAVA staff drafted this Element. The amended language of this chapter will be sent to the U.S. Election Assistance Commission (EAC) as an update required by section 254(a)(12) of HAVA.

STATE PLAN ADVISORY BOARD

After consultation with the State Plan Advisory Board, (Board) the Department amended the Pennsylvania State Plan and submitted the amendments to the EAC on August 13, 2004. The amendments were published in the *Federal Register* on September 30, 2004.

The Department convened the Board again on June 27, 2005, in Harrisburg, to discuss the goals, objectives, and accomplishments of the last calendar year and to approve the 2005 amendments to the State Plan. Leonard C. Piazza III of Luzerne County (representing 3rd Class Counties), Joyce E. McKinley of Centre County (representing 5th Class Counties), and Darlis Dyer of Montour County (representing 8th Class Counties) were also welcomed as newly appointed members of the Board filling vacancies that had occurred within the previous year. The first order of business for the Board was the nomination and election of the new chairperson, Robert Lee of Philadelphia County. John Neeves, Adjutant of the Disabled American Veterans of Pennsylvania was also appointed to the Board due to a vacancy although this appointment was made after the June 27, 2005 meeting.

The current list of Board members is as follows:

- Gladys M. Brown, Public At Large Member
- V. Rev. Neal Carrigan, Blind & Visually Impaired Pennsylvanians

- Vice-Chair Deena K. Dean, Director of Elections, Bucks County (county of the second class A)
- Darlis Dyer, Assistant Director of Elections, Montour County (county of the eighth class)
- Denise W. Jones, Chief Clerk/Director of Elections, Venango County (county of the sixth class)
- Lee E. Knepp, Chief Clerk, Snyder County (county of the seventh class)
- Chair Robert Lee, Jr., Voter Registration Administrator, Philadelphia County (county of the first class)
- Joyce E. McKinley, Director of Elections, Centre County (county of the fifth class)
- John Neeves, Adjutant, Disabled American Veterans of PA
- Eileen Melvin, Chairwoman, Republican State Committee of PA
- Leonard C. Piazza, III, Director of Elections, Luzerne County (county of the third class)
- Representative T.J. Rooney, Chair, Democratic State Committee of PA
- Larry Spahr, Director of Elections, Washington County (county of the fourth class)
- Josh Wilson, Public At Large Member
- Mark Wolosik, Division Manager for Elections, Allegheny County (county of the second class)

In addition to the Board meeting, the Department posted the proposed amendments to the State Plan on the Department's HAVA website (www.hava.state.pa.us) for a 30-day public comment period, and held a public hearing on August 1, 2005. The following five individuals submitted public comments and/or testified at the public hearing on behalf of their organization:

1. Lora Lavin – League of Women Voters of Pennsylvania
2. Robert Lee – Philadelphia County Board of Elections
3. Paul O'Hanlon – Disabilities Law Project
4. Marybeth Kuznik – VotePA
5. Barry Kauffman – Common Cause - Pennsylvania

LEGISLATION ENACTED

The General Assembly passed two pieces of legislation affecting election procedures in the Commonwealth. Act 2004-97 amended several aspects of the Pennsylvania Election Code including requirements for poll watchers, extends the time for examination of provisional ballots, specifies the reasons for not counting provisional ballots, and includes new requirements for the return of election materials to county boards of elections after the polls close. In addition, Act 2004-97 included automatic recount procedures for statewide elections when the margin of victory is less than one half of 1%.

Act 2004-98 provided that the standards adopted by the Voting Standards Development Board, known as "What Constitutes a Vote" would have the full force and effect of law for the November 2, 2004 General Election. The passage of Act 2004-98 became necessary after the

Commonwealth Court of Pennsylvania ruled that the standards are advisory and not binding on the courts. *See In Re Pennsylvania General Election for Snyder County Commissioner,* 841 A.2d 593 (Pa. Commw. Ct. 2003), *aff'd sub nom., Shambach v. Bickhart,* 577Pa.384, 845 A.2d 793 (2004).

It is important to note that Act 2004-98 only applied to the November 2, 2004 General Election as a special rule. Although Act 2004-98 corrected the matter, permanent statutory language has not yet been enacted.

VOTER VERIFIABLE PAPER AUDIT TRAIL

As indicated in the State Plan, the Department continues to monitor the national debate on the use of electronic voting systems and voter verifiable ballots. Over the last two years two concepts have evolved that affect the meaning of the paragraph at the bottom of page 12. Often during the debate the terms "voter verifiable paper ballot" and "voter verifiable paper audit trail (VVPAT)" have been used interchangeably although they are defined differently. Voter verifiable paper ballot is not used in the State Plan in the context the term is now used. While the analysis presented in the State Plan was accurate at the time the Plan was issued, (i.e, a DRE could not produce a voter verified paper ballot that would have the effect of superseding the votes contained on the DRE), it must now be revised. Therefore, the following will serve to update the Commonwealth's position on this issue.

A voter verifiable ballot is understood to be a paper ballot that can be used separately from an electronic voting system. It is not necessarily produced by a computer or DRE but could be used as part of an electronic voting system, i.e., be tabulated by automatic tabulating equipment. An optical scan electronic voting system is a voter verified paper ballot system. The voter verified paper ballot contains the official record of votes cast. Used in this context, Pennsylvania already uses the voter verified paper ballot, i.e., on optical scan, punch card, and other paper based voting systems.

On the other hand, a voter verified paper audit trail (VVPAT) is produced by a DRE or electronic voting system to enable the voter to verify that his/her selections on the VVPAT match the selections he/she has made on the electronic voting system. In some systems, the VVPAT containing an image of the ballot produced by the DRE would be deposited by the voter into a ballot box upon registering a vote on the DRE. In other systems the VVPAT is not touched by the voter but viewed through a window and retained within the DRE or a compartment attached to the DRE.

The Election Code provides that an electronic voting system must produce a permanent physical record of each vote cast. DREs currently in use in Pennsylvania meet this requirement through electronic ballot image retention (BIR) of each vote cast and the ability to print the contents of the BIR on paper for use in conducting audits. The voter verified paper audit trail would also meet this test. However, the audit trail is a record, but not the official record of the votes cast. While it is not specified in the statute what the function of the paper audit trail would be in the case of a recount or discrepancy, an electronic voting system producing a VVPAT is not required or prohibited by statute and can be used in Pennsylvania subject to regulation by the Department of State and/or the General Assembly.

Although the EAC has not yet made a final decision regarding the definitions of "accessible" and "manual audit capacity," the EAC has received initial recommendations for improving the existing 2002 Voting System Standards (VSS) from the Technical Guidelines Development Committee (TGDC) as required by HAVA. These initial revisions to the VSS state that a VVPAT is not mandatory, yet include Standards for systems with VVPATs for those States that choose to require or allow usage of a system that includes VVPAT.

The initial VVSG recommendations also include information on Independent Dual Verification (IDV) voting systems, which would allow the industry to design, develop and market voting systems with various means of independent verification of system accuracy and audit capabilities to meet future requirements of the VVSG.

VVPAT is a national topic of discussion among election officials at all levels of government, advocates for voters and advocates for people with disabilities. Proponents of the VVPAT argue that it allows a voter to read a printed record of their voted ballot prior to casting such ballot on an electronic voting system. Opponents of the VVPAT argue that mandatory use of the VVPAT requires Election Day use of a mechanical printer in an electronic voting device which could malfunction and adds a paper-based process that is unproven.

If the EAC were to interpret HAVA to require VVPAT, or issue Standards for States that require or allow use of a system with VVPAT, after systems have been purchased to comply with the unavoidable January 1, 2006 HAVA deadline for complying with the existing 2002 Voting System Standards, significant time and funding would be necessary to meet the requirement.

The Department of State will work with the General Assembly to identify options available to the counties to use electronic voting systems with a VVPAT and define the role of the VVPAT during a recount.

COMMONWEALTH'S PROGRESS ON THE IMPLEMENTATION OF HAVA

Pennsylvania's Voting Systems and Actions Planned by the Commonwealth to Comply with Section 301 of HAVA:

2004:

- The Commonwealth requested a waiver authorized by section 102(a)(3)(B) of HAVA[1] to postpone replacement of lever machines and punch card systems. The waiver request was sent to the U.S. General Services Administration in December of 2003, and the General Services Administration approved the Department's request by letter dated February 25, 2004. The effect of the waiver is to postpone the required replacement of the voting systems no later than the Federal elections held after January 1, 2006, instead of by January 1, 2004. The waiver was necessary because the Commonwealth has been waiting for a determination by the EAC or other authority regarding the requirements for a HAVA compliant voting system. In addition, each HAVA compliant voting system will have to be reviewed and examined to determine compliance with Pennsylvania law.

The Commonwealth plans to work aggressively to expedite the purchase of the new voting systems by the counties before January 1, 2006, but did not believe that it would be physically possible or prudent for counties to procure new voting systems for over 9,000 precincts, train elections officials to operate them and expect voters to use them properly at the November 2, 2004 General Election.

2005:

- On February 15, 2005 a reexamination of the electronic voting system used in Beaver, Greene, and Mercer Counties was conducted. The reexamination was scheduled as a result of a petition filed by 19 registered electors of Beaver County in accordance with section 1105-A(a) of the Election Code, 25 P.S. § 3031.5(a). The result of the reexamination was the decertification of the voting system on April 7, 2005 and a subsequent prohibition of its use in Pennsylvania. The three affected counties contracted with an optical scan vendor to conduct the May 17, 2005 Municipal Primary.

- The Commonwealth began the process of examining HAVA compliant electronic voting systems for compliance with the Election Code in February 2005, and additional examinations will be conducted throughout the summer. As referenced in State Plan Element 4, Act 2002-150 added a requirement to the Election Code that all electronic voting systems be examined by a federally qualified independent testing authority and meet Federal Voting Systems Performance and Test Standards. The Department's interpretation of the statute requires that electronic voting systems meet the Federal Voting Systems Performance and Test Standards released in 2002 and be found in compliance with the Election Code in order to be considered HAVA compliant.

- On May 31, 2005 the Pennsylvania Department of General Services, on behalf of the Department of State, released an Invitation for Bid (IFB) to allow vendors to submit quotes for the purchase of systems. To ensure compliance, the report issued by the Secretary of the Commonwealth granting or denying certification for use in Pennsylvania will not be released until the Department of State is confidant that the vendor has met all requirements.

Elimination of Lever Voting Machines and Punch Card Electronic Voting Systems

2005:

- The delayed organization of the U.S Election Assistance Commission (EAC), and subsequent lack of Federal guidance severely impeded the Department's ability to make progress towards voting system replacements or upgrades. Specifically, the Department has waited for the EAC to define the terms "accessible" and "manual audit capacity" as used in HAVA before the Department determines which systems should be considered for examination and certification in Pennsylvania. The EAC has not yet made those decisions.

Accessibility of Voting Systems for Electors with Disabilities:

2004:

- In an effort to improve polling place accessibility, the Secretary of the Commonwealth formed the Polling Place Accessibility Advisory Group composed of advocacy groups for individuals with disabilities and various county representatives to review and revise the Commonwealth's accessibility guidelines and develop procedures to assist counties in increasing the number of accessible polling places in each county. Please see www.hava.state.pa.us for Pennsylvania's guidelines for polling place accessibility.

- The Commonwealth asked counties to conduct a survey of all polling places in the Commonwealth to determine their accessibility under the guidelines issued by the Department of State under the Voter Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee, *et seq.*). When it became available, the Department provided the ADA Checklist for Polling Places issued by the U.S. Department of Justice's Civil Rights Division to the counties. The Department is currently reviewing the surveys. Upon the completion of the survey review, the Commonwealth plans to make Federal funds (specifically funds provided by the Department of Health and Human Services under Title II of HAVA) available to counties to increase the accessibility of polling places.

2005:

- The survey results are providing the Department with a basic understanding of accessibility issues related to polling places. The Department plans to disburse funding in a manner that will allow for the largest number of inaccessible polling places to become accessible. In furtherance of this effort, the Department has held meetings with accessibility advocates, including a Polling Place Accessibility Advisory Group.

- To date, the Department has collected survey results from 66 counties. Of the 9,437 polling places across the Commonwealth, 7,054 have been found to be accessible, 2,244 are inaccessible, and 139 are undefined. Northumberland County has a total of 94 polling places, however they have not yet certified their results to the Department.

Alternative Language Accessibility:

2004:

- In an effort to improve alternative language accessibility, the Secretary of the Commonwealth formed the Alternative Language Accessibility Advisory Group composed of advocacy groups for individuals who speak alternative languages as a primary language and various county representatives to review the status of alternative language accessibility across the Commonwealth and provide information and advice on increasing the number of polling places accessible to individuals who speak alternative languages as a primary language. To date, the Advisory Group has met four times and

has approved various voter education initiatives including development of the PA Votes! website.

- All materials designed for use by voters regarding HAVA Title III Complaints, provisional voting and voter identification have been translated into Spanish and provided to the 67 county boards of elections.

- The Alternative Language Accessibility Advisory Group held combined meetings with the Voter Education Advisory Group to discuss methods to educate alternative language communities about the new election-related requirements and the electoral process in general.

- The Department procured maps of each county detailing U.S. Census Bureau data in order to assist the Department's identification of counties with significant Spanish-speaking populations for the purpose of coordinating State and county efforts to produce and properly distribute bilingual election-related materials including ballots.

2005:

- Throughout the Special Election held in Montgomery and Philadelphia Counties on March 9, 2004, the April 27, 2004 General Primary, and the November 2, 2004 General Election the Department provided the voter education materials and tools in Spanish. See section on voter education below for more information.

- To ensure that the Department is able to quickly and correctly translate necessary materials, and to reach out to Spanish-speaking communities, a bilingual coordinator was hired in August 2004. The bilingual coordinator was successful in conducting election official training, providing translations for election materials, and reaching out to the Spanish-speaking community for voter education efforts. This effort includes our website, toll-free telephone line and all voter education materials that are referenced in the provisional voting and voter education sections of this report.

Provisional Voting in Pennsylvania:

2004:

- In an effort to create standardized statewide procedures for provisional balloting, the Secretary of the Commonwealth, in consultation with representatives of the county boards of elections and advocacy groups, prescribed the format of the provisional ballot for all voting systems and prescribed the procedures to be followed in processing and tabulating such ballots. The procedures adopted by the Secretary of the Commonwealth include a required notice containing instructions on how to cast a provisional ballot. Instructions must be posted in accordance with the applicable provisions of HAVA.

- During the April 27, 2004 General Primary, 2,480 provisional ballots were cast in Pennsylvania. Of those, 37% of the provisional ballots were counted, 33% were partially counted, and 30% were not counted for various reasons.

- All materials provided to individuals who vote by provisional ballot have been provided to the county boards of elections in English and Spanish in a format that allows both languages to appear on the same form.

- The Commonwealth continues to explore methods to provide voter registration mail applications to individuals who vote by provisional ballot in order to allow those individuals to update their voter registration status, if necessary. Due to the amount of information required to be placed on provisional voting materials by legislative mandate, the Commonwealth was unable to print a voter registration mail application on provisional ballot materials, but it will be providing county boards of elections with the capability to generate a form letter and label automatically for the purpose of mailing a voter registration mail application to provisional voters to invite those individuals to register to vote or to update their voter registrations.

2005:

- The Department, in cooperation with its Bureau of Commissions, Elections and Legislation and Bureau of Management Information Systems, developed and implemented a reporting system that allows counties on the Statewide Uniform Registry of Electors (SURE) to efficiently research the registration status of provisional voters and to report the status of provisional ballots to the Department in a uniform manner. Effective use of this system allows the Department to quickly upload provisional ballot status information for public consumption as required by the *Election Code*. Counties that were not on the SURE system at the time of the General Election were provided with the program, and were offered alternative methods to provide provisional ballot information to the Department. The Department was required to provide for provisional ballots during a special election held in Columbia County in January 2004. The special election was helpful to the Department as a trial for the provisional ballot process prior to the April 27, 2004 General Primary.

- During the November 2, 2004 General Election, 54,363 provisional ballots were cast. Of those, 27.6% were counted, 21.7% were partially counted, 50.4% were not counted for various reasons, and 0.03% were not processed by county boards of elections. Voters were able to call a toll-free telephone number or access the Department's website to determine the status of their provisional ballot.

- The Commonwealth encouraged counties that did not plan to mail voter registration forms to provisional voters in order to allow them to update their registration status to provide the forms at polling places.

Voting Information Requirements:

2004:

- The Commonwealth, through the Department of State and in consultation with county representatives and community stakeholders, prescribed the contents of a bilingual notice for posting at each polling place that details the acceptable forms of identification required of voters who appear to vote in an election district for the first time, provisional voting information, and information regarding HAVA Title III complaints. The Department worked cooperatively with counties and stakeholders to develop the format of the notice, and to facilitate re-production and posting at each polling place for elections occurring after January 1, 2004. The information contained on the posting was provided to counties in two formats: (1) A format similar to the current cards of instructions and penalties to be printed by the county boards of elections; and (2) a large voter-friendly poster which the Commonwealth plans to provide through the November 2, 2004 General Election. Both formats must be posted in every polling place for any election held after January 1, 2004.

- The Commonwealth printed 15,000 voter-friendly posters, and provided at least one poster for every election district, and at least one additional poster to be posted in elections districts where county boards of elections provide election-related materials printed in Spanish.

- The Commonwealth reproduced 250,000 copies of the posting described above in flier form and provided them to state legislators, county boards of elections, municipalities, libraries and state agencies that provide voter registration services.

2005:

- Polling place postings are continually updated by the Department for compliance with HAVA and the Election Code as needed. Changes to all forms are made in both English and Spanish.

Computerized Statewide Voter Registration List:

2004:

- Act No. 2002-3 authorizes the establishment of a central uniform registry that is HAVA compliant. (*See Appendix C.*) However, because SURE could not be fully operational by the date specified by section 303(d)(1)(B) of HAVA – January 1, 2004 – the Commonwealth invoked the waiver authorized by HAVA to extend the deadline for full implementation until January 1, 2006. The Commonwealth plans to use part of its requirements payments to pay for the costs of the SURE system. By the April 27, 2004 General Primary, 56 counties were using the SURE System as their official record of voter registration. Pennsylvania's 11 remaining counties will be fully connected to the SURE System as soon as possible, but no later than the January 1, 2006 deadline imposed by HAVA.

2005:

- Act No. 2002-3 authorizes the establishment of a central uniform registry that is HAVA-compliant. *(See Appendix C.)* However, because SURE could not be fully operational by the date specified by section 303(d)(1)(B) of HAVA – January 1, 2004 – the Commonwealth invoked the waiver authorized by HAVA to extend the deadline for full implementation until January 1, 2006. The Commonwealth has used and plans to continue using part of its requirements payments to pay for the costs of the SURE system. As of June 2005, 56 counties are using the SURE system as their official record of voter registration. Pennsylvania's 11 remaining counties will be fully connected to the SURE system during the summer and fall of 2005. The SURE system will be fully deployed as the Commonwealth's official voter registration system prior to 2006.

- When SURE is fully deployed, it will be the primary mechanism counties will use to verify voters' driver's license and social security numbers though an interface to the state's Department of Motor Vehicles and the Social Security Administration as required by HAVA. SURE will also serve as the basis to implement other improvements to election administration in Pennsylvania, including: pubic access to one's own voter registration information on the Internet, reporting of statewide statistics, electronic registration at other state agencies, and other election and voter registration-related features.

Requirements for Voters Who Register by Mail:

2004:

- The Department of State has prescribed the content of two notices that will be posted at each polling place detailing the acceptable forms of identification required of voters who appear to vote in an election district for the first time. The Department worked cooperatively with counties and other stakeholders to develop the format of the notice and facilitate production.

- The Department is also continuing to work with the counties and stakeholders to educate voters regarding the voter identification requirements imposed upon first-time voters by Act 150 and the rights of such voters to cast a provisional ballot in the event that they are unable to produce identification required by sections 1210(a) or 1210(a.1) of the Election Code.

2005:

- The Department is working with the Pennsylvania Department of Transportation (PennDOT) to meet requirements of HAVA that mandate a process for verifying voter registration information through the Commonwealth's driver's license records or U.S. Social Security Administration records.

Voter Education:

2004:

- The Commonwealth, through the Department of State and in consultation with county representatives and community stakeholders, prescribed the contents of a bilingual notice for posting at each polling place that details the acceptable forms of identification required of voters who appear to vote in an election district for the first time, provisional voting information, and information regarding HAVA Title III Complaints. The Department worked cooperatively with counties and other stakeholders to develop the format of the notice, and to facilitate re-production and posting at each polling place for elections occurring after January 1, 2004. The information contained on the posting was provided to counties in two formats: (1) A format similar to the current cards of instructions and penalties to be printed by the county boards of elections; and (2) a large voter-friendly poster that the Commonwealth plans to provide through the November 2, 2004 General Election. Both formats were to be posted in every polling place for any election held after January 1, 2004.

- The Commonwealth printed 15,000 voter-friendly posters and provided at least one poster for every election district, with at least one additional poster to be posted in elections districts where county boards of elections provide election-related materials printed in Spanish for the April 27, 2004 General Primary.

- The Commonwealth reproduced 250,000 copies of the posting described above in the form of a flier and provided them to State legislators, county boards of elections, municipalities, libraries and State agencies who provide voter registration services.

- The Commonwealth launched the *PA Votes!* website on April 12, 2004, at www.pavotes.state.pa.us. *PA Votes!* is geared toward the voting public in general. The website includes information regarding voter registration, county specific voting instructions, Election Day information, alternative language interpretive services, and information regarding HAVA and SURE.

- Department staff recorded radio sound bites in English and Spanish for use as public service announcements to educate listeners about voter identification requirements, overvotes, provisional voting, and HAVA Title III complaints for the Special Elections held in January and March of 2004 for State legislative offices, as well as for the April 27, 2004 General Primary.

- As part of a combined voter education and voter outreach effort, the Department developed additional public service announcements for print and television media outlets to educate voters and encourage voter participation. PSAs were produced in alternative English and Spanish to further encourage voter participation by citizens whose primary language is not English.

- The Department also developed and produced a new *Pennsylvania Voter Guide*, which provides comprehensive information about registering and voting in Pennsylvania. The

Pennsylvania Voter Guide was printed in English and Spanish and distributed to the Department, county boards of elections, and state agencies that participate in voter registration.

- As part of the Department's voter outreach program, the Secretary produced additional HAVA compliant voter registration applications and distributed them to all registration agencies, the 67 county registration offices and civic organizations interested in voter registration.

- The Commonwealth provided voter education materials in alternative languages in those jurisdictions falling under section 203 of the Voting Rights Act, as well as those jurisdictions with responsibilities to adhere to the requirements of other provisions of the Act, including sections 2, 4(e) and 208; and it made available alternative language voter education materials to all other jurisdictions irrespective of their coverage under section 203 and to groups that request them.

- The Commonwealth provided voter registration mail applications to all senior high school students graduating from high school during the spring of 2004.

2005:

- Prior to the April 27, 2004 General Primary, the Department relied on public service announcements, required advertisements in newspapers, and polling place postings to inform voters of their rights and other important information necessary for participation on Election Day. After the 2004 General Primary, the Department contracted with an advertising agency to conduct a statewide voter education effort for the November 2, 2004 General Election. The agency integrated TV, radio and print advertisements, billboards, comprehensive voter guides, pamphlets, an instructional video, a new website, and various public events into the voter education program. According to the agency, our voter education message of "Ready.Set.Vote" reached over nine million Pennsylvanians prior to Election Day. This initiative was conducted both in English and Spanish. "Ready.Set.Vote" and other voter education initiatives received positive reviews from most county personnel, advocacy groups, and the public.

Education for State/County Officers:

2004:

- Department staff attended the Eastern and Western County Election Personnel Associations in February and March of 2004, respectively, to discuss provisional voting, voter identification, HAVA Title III complaints, and poll worker training in preparation for the April 27, 2004 General Primary.

- In addition, the Department conducted county training sessions July 13, 2004 through July 23, 2004 in five regional meetings across Pennsylvania to address the needs of the

November 2, 2004 General Election. Representatives from sixty-two of Pennsylvania's sixty-seven counties attended the training sessions.

2005:

- The Department conducted county training sessions from June 20, 2005 through June 24, 2005 in the form of five regional meetings across Pennsylvania. The goal of the seminars was to discuss election issues in small groups in an effort to promote uniformity in procedures and practices. Although the sessions were similar to the seminars held in July of 2004, additional topics were added to the agenda such as voting system procurement, county plans, and county grants.

Education of District Election Officials:

2004:

- The Commonwealth, through the Department of State, developed, implemented and conducted an extensive program to educate district election officials (*i.e.*, poll workers) regarding the changes to Federal and State election laws. All counties were given the opportunity to have Department of State personnel conduct these trainings. Of the 67 counties, 13 requested Department assistance with their district election official training. The Department participated in the training of the 13 counties that requested assistance by providing staff to conduct the training programs. The training involved an extensive Power Point presentation and a printout of the presentation for poll workers to use on Election Day.

2005:

- The Department, in consultation with county election representatives developed and is in the process of implementing a voluntary professional certification and poll worker training program that can be conducted by the county boards of elections.

- In addition, the Department of State and Deloitte Consulting, LLP conducted a comprehensive, statewide quality assurance assessment program focusing on the infrastructure and preparedness of the 67 counties for the 2004 General Election. Deloitte consultants visited all of the counties and assessed them on quality assurance and preparedness in regard to eight categories: 1) voting systems; 2) provisional ballots and voter identification; 3) absentee and alternative ballots; 4) reporting of results; 5) ballot review; 6) accessibility; 7) resources; and 8) training and education. As a result of the quality assurance assessment, each county received a specific post-assessment letter detailing its strengths and weaknesses as well as recommendations for improvement. The Department and Deloitte also wrote and distributed two global communiqués highlighting statewide trends and recommendations and an "Election Officials' Information Card." Several counties were provided with additional training resources, ranging from presentation materials and handouts to Department/Deloitte-conducted training sessions

for district election officials. Counties with unique challenges received additional consultation and guidance from the Department. The quality assurance assessment significantly raised the awareness and ensured the preparedness of both the Department and the counties for the 2004 General Election.

- The Commonwealth, through the Department of State, developed, implemented and conducted an extensive program to educate district election officials (*i.e.*, poll workers) regarding the changes to Federal and State election laws. All counties were given the opportunity to have Department of State personnel conduct these trainings. Of the 67 counties, 10 requested Department assistance with their district election official training for the November 2, 2004 General Election. The Department participated in the training of the 10 counties that requested assistance by providing staff to conduct the training programs. The training involved an extensive Power Point presentation and a printout of the presentation for poll workers to use on Election Day. Only two counties requested poll worker training assistance for the May 17, 2005 Municipal Primary.

[FR Doc. 05–19440 Filed 9–29–05; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

[OE Docket No. EA–281–A]

Application To Export Electric Energy; Manitoba Hydro

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Manitoba Hydro, a Canadian Crown Corporation, has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 31, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 17, 2003, the Department of Energy (DOE) issued Order No. EA–281 authorizing Manitoba Hydro to export electric energy from the United States to Canada. That two-year authorization will expire on November 17, 2005. On September 2, 2005, Manitoba Hydro applied to DOE to renew its authority to export electric energy from the United States to Canada for a five (5) year period.

In OE Docket No. EA–281–A, Manitoba Hydro proposes to purchase electric energy in Canada and wheel that energy through transmission facilities in the United States and return it to Canada using certain transmission facilities located at the U.S. border with Canada. In addition, Manitoba Hydro proposes to purchase electric energy from generators, power marketers, or federal power marketing agencies in the U.S. and export that energy to Canada. Manitoba Hydro will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Booneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Manitoba Hydro has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the Manitoba Hydro application to export electric energy to Canada should be clearly marked with Docket EA–281–A. Additional copies are to be filed directly with K. Jennifer Moroz, Barrister & Solicitor, Legal Department, Manitoba Hydro, 820 Taylor Avenue, Winnipeg, Manitoba Canada R3M 3T1AND David Martin /Connelly, Bruder, Gentile & Marcoux, L.L.P., 1701 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20006–5805.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov*. Upon reaching the Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on September 26, 2005.

Anthony J. Como,

Director, Permitting and Siting, , Office of Electricity Delivery and Energy Reliability.

[FR Doc. 05–19591 Filed 9–29–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Procedures for Distribution of Remaining Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed procedures for distribution of remaining crude oil overcharge refunds and opportunity for comment.

SUMMARY: In a May 21, 2004 Notice, the Department of Energy (DOE) Office of Hearings and Appeals (OHA) announced procedures for making one final round of refund payments in this proceeding. However, there is ongoing litigation that could affect the amount of crude oil monies available for distribution, thus making it unworkable at this point to have a single, last round of payments that would exhaust the remaining crude oil refund monies. We instead propose here to issue partial refunds amounting to approximately 90% of the money due each eligible claimant.

DATES: Comments must be filed in duplicate within 30 days of publication of this Notice in the **Federal Register**.

ADDRESSES: Comments should be addressed to: Crude Oil Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–1615, and submitted electronically to *steven.goering@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Steven Goering, Staff Attorney, or Richard Cronin, Assistant Director, Office of Hearings and Appeals, Department of Energy; telephone: 202–287–1449, e-mail: *steven.goering@hq.doe.gov*, *richard.cronin@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: OHA published a Notice of final procedures for final crude oil refunds in the **Federal Register** on May 21, 2004. 69 FR 29300. In the May 21 notice, we explained that we would be sending notice to all claimants (or their representatives of record) who purchased more than 280,000 gallons of eligible petroleum products during the relevant period. We also stated that claimants would be required, no later than December 31, 2004, to submit verification of the information in our database. Shortly after issuing the May 21 Notice, we sent notice to claimants and received 30,873 timely submissions.

In the May 21 notice, we set forth a plan to make one final round of refund payments, with the intent ''to distribute all of the reserved funds to claimants

'insofar as practicable.' '' 69 FR at 29302. We rejected a proposal by a representative of a few large claimants that would have required two disbursements, the second a ''closeout payment'' available only to clients of that representative and other large claimants. *Id.*

Since that time, events and proliferating litigation affecting the windup of this crude oil refund proceeding have precluded the Department from proceeding with the calculation of the per-gallon ''volumetric'' refund amount that is necessary to a single, final payment of refunds to all qualified applicants. Calculating the volumetric amount requires two fixed numbers: (1) The amount of funds available for distribution (''the numerator''), which is divided by (2) the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants (''the denominator''). However, as explained below, the increasing litigation that has been brought to bear on the proceeding may affect both the numerator and the denominator of the volumetric calculation. As a result, the plan to make a single, final round of refunds to eligible persons is unworkable.

Among matters affecting our ability to proceed with the calculation of a final volumetric and proceed with a final distribution is a decision on January 26, 2005, by the United States District Court for the District of Columbia. In *Consolidated Edison Co.* v. *Abraham*, Civil Action No. 03–1991, in which the Court awarded plaintiffs attorney's fees in the ''amount of thirty percent (30%) of the fund derived from the amount of the increase in the per million-gallon distribution over the $670 [per million gallons] initially proposed by DOE.'' *Consolidated Edison* v. *Abraham*, Civil Action No. 03–1991, slip op. at 12 (January 26, 2005). Under this decision, a significant amount of the crude oil refund monies—approximately $10 million—would be paid directly to plaintiffs' counsel and not be available for distribution to individual claimants. The Department has filed Notices of Appeal regarding this decision, and plaintiffs have filed appeals of the order insofar as it denied the full amount of attorney's fees they sought, which would have amounted to 10% of the entire ''Subpart V'' crude oil fund, *i.e.*, about $28 million. See D.C. Cir. Docket Nos. 05–5089, 05–5090, 05–5223, and Fed. Cir. Docket Nos. 05–1309, 05–1310, 05–1450.

The same Consolidated Edison plaintiffs have also filed actions challenging several outstanding OHA Decisions granting refunds. For example, plaintiffs are challenging the crude oil refunds granted to the Defense Logistics Agency and other federal and state agencies. The district court dismissed this challenge and plaintiffs have appealed that decision to both the United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for the D.C. Circuit. See D.C. Dist Ct. Dkt. No. 04–382, 2005 Lexis 5663 (March 31, 2005) (OHA Case No. RF272–00011) (Fed. Cir. Dkt. No. 05–1509 and Ct. App. D.C. Dkt. No. 05–5302). For other pending litigation instituted by the Consolidated Edison plaintiffs challenging OHA refund decisions, see *Lubrizol Corporation* v. *Bodman*, D.C. Dist Ct. Dkt. No. 05–1467 RWR (OHA Case No. RC272–00438); *Hercules, Inc* v. *Bodman.*, Fed. Cir. No. 05–1442; D.C. Cir. No. 05–5201; Dist Ct. Dkt. 02–1507 (OHA Case No. RR272–00204); and *Chesebrough-Pond's USA Co.* v. *Bodman*, Energy Management ¶ 26,752, aff'd Fed. Cir. Dkt. No. 04–1615, 128 Fed. Apx. 153 (May 4, 2005), (OHA Case No. RF272–97101). The outcome of these cases affects the amount of money available for distribution to individual applicants. Also, a decision concerning a Motion for Reconsideration of OHA's denial of a refund in International Steel Group, Inc. D.C. D.Ct. # 05–1466, (OHA Case No. RR272–00321), is also in litigation. See *Mittal Steel USA ISG, Inc.* v. *Bodman*, D,C. Dkt. No. 05–1466. In that case, a reversal of OHA's decision would add 609,873,817 gallons (the number of gallons claimed on the application) to the denominator of the volumetric. Because of the potential impact of the pending litigation on both the numerator and denominator of the volumetric, it is not feasible to have one final distribution of the crude oil funds at this time.

Significant time that has elapsed since the deadline for refund claimants to submit verification information, such as present addresses and other locators. Our experience in previous crude oil refund rounds is that this verification information becomes quickly and increasingly obsolete. Insofar as it is able, OHA has resolved the issues barring the commencement of a final crude oil refund distribution and is in a position to propose—in lieu of the planned, single refund distribution—a partial crude oil refund distribution of the moneys that are not threatened by the litigation referenced above. That would encompass a vast majority of the funds on hand. While a partial refund increases the burden on the Department, OHA believes that the refund claimants deserve relief from the effects of the ongoing litigation. To make a round of partial crude oil refunds, OHA is issuing this notice announcing a provisional volumetric refund amount and defining that portion of the crude oil monies that would be reserved pending the resolution of the litigation. We ask interested parties to comment on the proposed refund procedure. Upon resolution of the aforementioned litigation, we would then consider procedures for another and final distribution of the remaining crude oil monies which would exhaust the crude oil fund.

Specifically, therefore, we are proposing to make refunds to all claimants based upon a volumetric calculated using a numerator of $252,000,000, *i.e.*, approximately 90% of all available funds, and a denominator of 366,324,981,322 gallons, *i.e.*, the number of gallons of eligible petroleum products purchased during the controls period by eligible claimants (365,715,107,505 gallons) plus the number of gallons claimed in the application denied by OHA that is currently the subject of pending litigation (609,873,817 gallons). This produces a volumetric refund of $0.00068 and distributes approximately 90% of the money due to over 99.75% of all eligible claimants.[1]

However, prudence requires that we not distribute funds to those claimants whose refunds are currently being challenged by third parties in pending litigation. Upon the conclusion of litigation and a final upholding of our refund awards, we propose to promptly release the funds to the affected claimants. The following is a list of the individual claimants whose refunds we propose to handle in this fashion:

RF272–00011 DEFENSE LOGISTICS AGENCY
RF272–00350 WISCONSIN DEPT. TRANSPORTATION
RF272–00512 STATE OF WEST VIRGINIA
RF272–04416 STATE OF CONNECTICUT
RF272–08074 STATE OF CONNECTICUT
RF272–09853 WASHINGTON STATE PATROL
RF272–11717 WASHINGTON STATE DEPT. TRANS.
RF272–12181 NEBRASKA PUBLIC POWER DIST.
RF272–12588 STATE OF CONNECTICUT

[1] We arrive at the volumetric refund amount by rounding down to the fifth decimal place. Rounding down ensures that there will be sufficient funds to pay refunds at a given volumetric refund amount.

RF272–17487 KENTUCKY DEPT. OF EDUCATION
RF272–18164 STATE OF NORTH DAKOTA
RF272–18963 STATE OF NEW MEXICO
RF272–19364 STATE OF MISSOURI
RF272–19386 STATE OF VERMONT
RF272–19457 STATE OF SOUTH DAKOTA
RF272–20947 LUBRIZOL CORPORATION
RF272–23229 DISTRICT OF COLUMBIA
RF272–23790 HERCULES, INC.
RF272–28260 WASHINGTON STATE FERRIES
RF272–35431 MARYLAND STATE AVIATION ADMIN.
RF272–44094 OHIO STATE HWY. PATROL
RF272–44344 STATE OF SOUTH CAROLINA
RF272–45477 ILLINOIS STATE TOLL HWY. AUTH.
RF272–49283 COMMONWEALTH OF KENTUCKY
RF272–49892 NEBRASKA ENERGY OFFICE
RF272–49898 STATE OF KANSAS
RF272–50638 WASHINGTON STATE DEPT OF TRANS
RF272–51829 WASHINGTON STATE PARKS & REC.
RF272–54955 U.S. POSTAL SERVICE
RF272–56597 STATE OF OKLAHOMA
RF272–59085 STATE OF UTAH, ENERGY OFFICE
RF272–59907 STATE OF COLORADO
RF272–60251 STATE OF WISCONSIN
RF272–61569 STATE OF MINNESOTA
RF272–61591 ARKANSAS HWY. & TRANS. DEPT.
RF272–62009 STATE OF NEW HAMPSHIRE
RF272–62522 STATE OF NEW YORK
RF272–63433 STATE OF DELAWARE
RF272–63623 MARYLAND STATE HWY. ADMIN.
RF272–63624 MARYLAND DEPT. GENERAL SERVICE
RF272–64195 STATE ARIZONA DEPT. OF TRANS.
RF272–64288 STATE OF ARKANSAS
RF272–64986 STATE OF FLORIDA
RF272–65199 STATE OF IOWA
RF272–65398 STATE OF NEVADA
RF272–65470 STATE OF MICHIGAN
RF272–65524 ILLINOIS DEPT. OF COMMERCE
RF272–65526 ALASKA DEPT OF TRANS & PUB FAC
RF272–66878 NEW YORK TRANSIT AUTHORITY
RF272–67007 COMMONWEALTH OF PENNSYLVANIA
RF272–67187 STATE OF INDIANA
RF272–67248 STATE OF CALIFORNIA
RF272–67313 STATE OF TEXAS
RF272–67507 STATE OF VERMONT DEPT. OF COR.
RF272–67509 STATE OF VERMONT—TRANSPORTTN
RF272–67586 STATE OF ALABAMA
RF272–68243 NEW JERSEY TRANSIT CORP.
RF272–68934 NEW YORK STATE THRUWAY AUTH.
RF272–69744 STATE OF NEW JERSEY
RF272–69948 WEST VIRGINIA HWY. DEPT.
RF272–71331 STATE OF TENNESSEE
RF272–74169 STATE OF MAINE
RF272–75269 VIRGINIA DEPT. OF STATE POLICE
RF272–87985 STATE OF MARYLAND
RF272–97101 CHESEBROUGH-POND'S USA CO.
RF272–98890 COMMONWEALTH OF VIRGINIA
RG272–00507 STATE OF OHIO
RK272–00147 STATE OF MONTANA
RK272–00362 STATE OF KANSAS
RK272–03404 WYOMING DEPT. OF TRANSPORTATN.
RK272–03418 STATE OF GEORGIA—ENERGY RES.
RK272–04041 STATE OF NORTH CAROLINA
RR272–00207 STATE OF TENNESSEE

OHA seeks comments on these proposed procedures. Interested parties should send comments to the address shown on the present Notice. After OHA considers the comments received, we will issue a final Notice that will explain how we will proceed with the refund process. The final Notice will be published in the **Federal Register**, and it will be available on the OHA Web site, *http://www.oha.doe.gov/*.

Issued in Washington, DC on September 26, 2005.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 05–19589 Filed 9–29–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/corporate/business/.*

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/corporate/business/.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CK–4, Bonneville Power Administration, PO Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq*. The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost Principles for Educational Institutions.
A–87 Cost Principles for State, Local and Indian Tribal Governments.
A–102 Grants and Cooperative Agreements with State and Local Governments.
A–110 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of

Higher Education, Hospitals and Other Non-Profit Organizations.
A–122 Cost Principles for Non-Profit Organizations.
A–133 Audits of States, Local Governments and Non-Profit Organizations.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 19, 2005.

Damian J. Kelly,

Manager, Supply Chain Policy and Governance.

[FR Doc. 05–19590 Filed 9–29–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6667–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050319, ERP No. D–FTA–J53006–UT, Mid-Jordan Transit Corridor Project, Proposed Light Rail Transit Service, Funding, Salt Lake County, UT.

Summary: EPA has environmental concerns with the proposed project due to the impacts of noise and vibration on residents living in close proximately to the proposed light rail line and associated train stations. EPA anticipates that more information regarding the mitigation of these impacts will be provided in the FEIS. Rating EC2.

EIS No. 20050321, ERP No. D–USA–D11038–PA, Pennsylvania Army National Guard's 56th Brigade Transformation into a Stryker Brigade Combat Team (SBCT) , Proposal to Comply with this Directive, near Annville, PA.

Summary: EPA expressed concern related to wetland, air quality PM10, noise and forest habitat impacts. EPA requested addition information and mitigation of these issues. Rating EC2.

Final EISs

EIS No. 20050324, ERP No. F–FRA–E40799–FL, Florida High Speed Rail, Tampa to Orlando, Transportation Improvement, NPDES Permit and U.S. Army COE Section 404 Permit, Hillsborough, Orange Osceola , and Polk Counties, FL.

Summary: While strongly supporting the proposed project, EPA continues to have environmental concerns related primarily to noise and vibration impacts. EPA also has concerns regarding the borrow areas utilized for fill material as well as impacts to wildlife. EPA recommends that environmental mitigation be further addressed in the ROD and subsequent permitting.

EIS No. 20050332, ERP No. F–AFS–L65449–AK, Couverden Timer Sales, Harvesting Timber, NPDES, Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits, Tongass National Forest, Juneau Ranger District, Chilkat Peninsula, AK.

Summary: No formal comment letter was sent to the preparing agency.

Dated: September 27, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–19605 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6667–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/19/2005 Through 09/23/2005 Pursuant to 40 CFR 1506.9.

EIS No. 20050390, Draft EIS, NPS, IA, Hoover Creek Stream Management Plan, Implementation, Herbert Hoover National Historic Site, IA, Comment Period Ends: 11/29/2005, Contact: Bruce McKeeman 319–643–2541.

EIS No. 20050391, Final EIS, AFS, CA, Creeks Forest Health Recovery Project, To Develop a Network of Defensible Fuel Profile Zones (DFPZs), Group-Selection Timber Harvest, Individual Tree Selection, Lassen National Forest, Almanor Ranger District, Plumas County, CA, Wait Period Ends: 10/31/2005, Contact: Al Vazquez 530–258–2141.

EIS No. 20050393, Final EIS, AFS, CA, Southern California National Forests Land Management Plans, Revision of the Angeles, Cleveland, Los Padres, and San Bernardino National Forests Land Management Plans, Implementation, San Bernardino, Riverside, and San Diego Counties, CA, Wait Period Ends: 10/31/2005, Contact: Ron Pugh 858–524–0150.

EIS No. 20050394, Draft EIS, FHW, IA, Council Bluffs Interstate System Improvements Project (Tier1), Transportation Improvements from the Missouri River on 1–80 east of the 1–480 Interchange in Omaha, Pottawamie County, IA and Douglas County, NE, Comment Period Ends: 02/28/2006, Contact: Philip Barnes 515–233–7300.

EIS No. 20050395, Draft Supplement, HUD, CA, Stillwater Business Park, New and Revised Information, Development of Business Park, Annexation AN1–01, Shastec Redevelopment Project Area, Airport Land Use Plan Amendment, Pre-Zone, General Plan Amendment GPA–2–01, Rezone RZ–1–01, Funding and U.S. Army COE 404 Permit, City of Redding, Shasta County, CA, Comment Period Ends: 11/14/2005 Contact: Nathan Cherpeski 530–225–4519.

EIS No. 20050396, Draft EIS, BIA, CA, Elk Valley Rancheria Martin Ranch 203.5—Acre Fee-to-Trust Transfer and Casino/Resort Project, Implementation, Federal Trust, Elk Valley Rancheria Tribe, Crescent City, Del Norte County, CA, Comment Period Ends: 11/28/2005, Contact: John Rydzik 916–978–6042.

EIS No. 20050397, Draft EIS, BIA, ID, Programmatic—Coeur d'Alene Tribe Integrated Resource Management Plan, Implementation, Coeur d' Alene Reservation and Aboriginal Territory, ID, Comment Period Ends: 11/14/2005, Contact: Tiffany Allgood 208–686–8802.

EIS No. 20050398, Final EIS, BLM, CA, Clear Creek Resource Management Area Plan Amendment, Hollister Resource Management Plan, Implement the Decision Made in the 1999 CCMA ROD, San Benito and Fresno Counties, CA, Wait Period Ends: 10/31/2005, Contact: Sky Murphy 831–630–5039.

EIS No. 20050399, Draft EIS, BLM, AK, Ring of Fire Resource Management Plan, Implementation, Alaska Peninsula, Kodiak Island and Aleutain Islands, AK, Comment Period Ends: 12/29/2005, Contact: Robert Lloyd 907–267–1214.

EIS No. 20050400, Draft EIS, BLM, 00, Lake Havasu Field Office Resource Management Plan, Implementation, Colorado River, Davis Dam in the north and south to Park Dam, CA and AZ, Comment Period Ends: 12/29/2005, Contact: Gina Trafton 928–505–1273.

Dated: September 27, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–19604 Filed 9–29–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7978–1; RFA NO: EPA–OEE–05–03]

Office of Environmental Education; Environmental Education Grants Program Solicitation Notice for 2006 Announcement Type: New Announcement

Catalog of Federal Domestic Assistance: 66.951.

Application Deadline: The closing date and time for receipt of Applications is November 23, 2005, 5 p.m. All applications, however transmitted, must be received in Headquarters or a Regional Office by the closing date and time to receive consideration. See Section IV(D) for further information.

Where To Send Applications: Mailing addresses are provided in Section VII.

Authorizing Legislation: Section 6 of the National Environmental Education Act of 1990 (Pub. L. 101–619).

Number of Awards: 150 grants are estimated, subject to the availability of funds and the quality of applications received. Most grants will be in the $10,000 to $15,000 range.

Funding Amount: Approximately $3 million.

Cost Sharing Requirement: Applicant must provide non-federal matching funds of at least 25% of the total cost of the project.

Project Period: July 1, 2006 is the earliest start date and most grants are for one year.

Award Date: July 1, 2006.

Contents By Section

Full Text of Announcement

Section I. Funding Opportunity Description

A. Summary

This document solicits grant proposals to support environmental education projects that promote environmental stewardship and help develop aware and responsible students, teachers, and citizens. This grant program provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques as described in this notice. This solicitation notice contains all the information and forms necessary to prepare a proposal. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional federal forms and requests for any other information needed to process your proposal.

B. EPA Strategic Plan Linkage and Anticipated Results

(1) *Linkage to EPA Strategic Plan:* The environmental education grants program supports progress towards EPA Strategic Goal 5 (Compliance and Environmental Stewardship), Objective 5.2 (Improve Environmental Performance through Pollution Prevention and Innovation), and Sub-Objective 5.2.1 (Prevent pollution and promote environmental stewardship by government and the public). Recipients of these grants will further EPA's strategic goals by implementing environmental education projects that improve environmental behavior through nonregulatory means, raise the public's awareness of actions it can take to prevent pollution, and promote environmental stewardship. EPA, in negotiating an assistance agreement work plan under this competition, will ensure that the work plan contains well-defined outputs, and to the extent practicable, well-defined outcomes.

Environmental Stewardship is defined for environmental education purposes as: Voluntary commitment, behavior, and accomplishments that result in environmental protection or improvement. Stewardship refers to an acceptance of personal responsibility for actions to improve environmental quality and to achieve sustainable outcomes. Stewardship involves initiatives and actions to enhance the state of the environment for the benefit of humanity and the animal kingdom. Some examples are: Minimizing or eliminating pollution at its source; using energy and natural resources efficiently; decreasing the use of hazardous chemicals; recycling wastes effectively; and conserving or restoring forests, prairies, wetlands, rivers, and urban parks to improve the quality of ecosystems, health, and life itself. Stewardship can be practiced by individuals, groups, schools, organizations, companies, communities, and government organizations.

(2) *Outputs* refer to measurable quantitative or qualitative activities, efforts, deliverables, or work products that the applicant proposes to undertake during the project period. EPA anticipates that outputs from the awards made under this announcement will include: Outreach projects to educate the public about environmental issues; the conduct of workshops, classroom activities, or field trips; training sessions for educators; development of educational materials and Web sites; and the conduct of needs assessments. See Appendix B for further information on outputs. A grant proposal must clearly define outputs that can be measured during the funding period. Grant recipients are required to submit to EPA status reports about their progress achieving outputs once the project is implemented.

(3) *Outcomes* refer to the result, effect, or consequence that will occur from carrying out the activities or outputs of the environmental education project that will support the EPA strategic goal. Outcomes may be environmental, behavioral, health-related or programmatic, must be quantitative, and may not necessarily be achievable during the project period. Outcomes may also be classified as short-, medium-, and long-term. *Short-term outcomes* include: Increased learning, knowledge, skills, attitudes, and motivation and must occur during the project period. *Medium-term outcomes* include: Decisions, actions, practices, and behavior which are the foundations of stewardship. For example, a project directed at students might include students cleaning up a stream, beach, habitat, or nature trail. A project directed at teachers might include teachers taking newly acquired skills into classrooms to teach and motivate students. Most projects will accomplish some medium-term outcomes during the project period. *Long-term outcomes* include: Enhanced civic responsibility, educational improvements; and environmental improvements. These outcomes are longer term and may occur after the project closes, such as a more environmentally literate public that takes action to restore or protect a watershed or transform a brownfields site into an inner city park.

Anticipated outcomes for environmental education grants include: (1) Promotion of environmental stewardship; (2) increased environmental knowledge and public awareness of environmental issues as measured by pre- and post-training surveys; (3) improved environmental literacy; (4) improved teacher access to training and research on environmental topics; and (5) sustainable environmental education programs. See Appendix B for further information on outcomes.

(4) *Environmental Results and Performance Measures* refer to methods of determining how successful you are at completing your planned outputs and outcomes, which must result in improved environmental results over time. Progress reports to EPA must document that outputs and short-term outcomes are completed, and that progress was made on medium- and long-term outcomes. See Section V(B)(3), for the requirements on evaluating your success in measuring performance. Your proposal must address those outputs and outcomes (as identified above and in Appendix B) that are appropriate for your project.

In summary, all proposals must promote stewardship and define measurable results that can be evaluated and reported to EPA once a grant project is underway.

C. Statutory Authority for Education

Section 6 of the National Environmental Education Act of 1990 (Pub. L. 101–619) authorizes the award of Environmental Education Grants. For purposes of this action, Environmental ''Education'' and ''Information'' are defined as follows:

Environmental Education: Increases public awareness and knowledge about environmental issues and provides the skills necessary to make informed decisions and take responsible actions. It is based on objective and scientifically sound information. It does not advocate a particular viewpoint or course of action. It teaches individuals how to weigh various sides of an issue through critical thinking and it enhances their own problem-solving and decision making skills.

Environmental Information: Proposals that simply disseminate ''information'' will not be funded. For example, projects that provide facts or opinions about environmental issues or problems, but may not enhance critical-thinking, problem solving or decision-making skills. Although information is an essential element of any educational effort, environmental information is not, by itself, environmental education.

D. Educational Priorities for Funding and Definition of Terms

All proposals must satisfy the definition of ''environmental education'' specified above and also address at least one of these educational priorities to qualify for a grant. The order of the list is random and does not indicate a ranking.

(1) *Capacity Building:* Increasing capacity to develop and deliver coordinated environmental education programs across a state or across multiple states.

(2) *Education Reform:* Utilizing environmental education as a catalyst to advance state or local education reform goals.

(3) *Community Issues:* Designing and implementing model projects to educate the public about environmental issues and/or health issues in their communities through community-based organizations or through print, film, broadcast, or other media.

(4) *Health:* Educating teachers, students, parents, community leaders, or the public about human-health threats from environmental pollution, especially as it affects children, and how to minimize human exposure to preserve good health.

(5) *Teaching Skills:* Educating teachers, faculty, or nonformal educators about environmental issues to improve their environmental education teaching skills, *e.g.*, through workshops.

(6) *Career Development:* Educating students in formal or nonformal settings about environmental issues to encourage environmental careers.

Definitions: The terms used above and in Section IV are defined as follows:

Capacity Building as used here has a statewide focus and many proposals have been rejected for failure to satisfy the scope of this definition. If you plan to address this priority, please read this whole paragraph carefully. Capacity building requires networking with various types of educational organizations and statewide implementation of educational programs. If your project fails to meet these objectives, please select another educational priority. For purposes of this program, ''Capacity Building'' refers to developing effective leaders and organizations that design, implement, and link environmental education programs across a state or states to promote long-term sustainability of the programs. Coordination should involve all major education and environmental education providers including state education and natural resource agencies, schools and school districts, professional education associations, nonprofit educational and tribal organizations. Effective efforts leverage available resources and decrease fragmentation of effort and duplication across programs. Examples of activities include: Identifying and assessing needs and setting priorities; identifying funding sources and resources; facilitating communication and networking; promoting sustained professional development; and sponsoring leadership seminars. If existing capacity building efforts are underway in your state, please explain how you will support those efforts with your proposal.

Education Reform refers to state, local, or tribal efforts to improve student academic achievement. Education reform efforts often focus on changes in curriculum, instruction, assessment, or how schools are organized. Curriculum and instructional changes may include inquiry and problem solving, real-world learning experiences, project-based learning, team building and group decision-making, and interdisciplinary study. Assessment changes may include developing content and performance standards and realigning curriculum and instruction to the new standards and new assessments. School site changes may include creating magnet schools or encouraging parental and community involvement. **Note:** All proposals must identify existing educational improvement needs and goals and discuss how the proposed project will address these needs and goals.

Environmental issue is one of importance to the community, state, or region being targeted by the project, *i.e.*, one community may have significant air pollution problems which makes teaching about human health effects from it and solutions to air pollution important, while rapid development in another community may threaten a nearby wildlife habitat, thus making habitat or ecosystem protection a high priority issue.

Partnerships refers to the forming of a collaborative working relationship between two or more organizations such as governmental agencies, not-for-profit organizations, educational institutions, and/or the private sector. It may also refer to intra-organizational unions such as the science and anthropology departments within a university collaborating on a project.

Section II. Award Information

A. Type of Assistance Instrument To Be Awarded

Assistance Agreement (Grant).

B. Number and Amount of Awards

Approximately $3 million is available for awards under this announcement. This grant program generates a great deal of public enthusiasm for developing environmental education projects. Consequently, EPA receives more applications for these grants than can be supported with available funds. Under this announcement, Headquarters awards grants larger than $50,000 in federal funds and the 10 EPA Regional Offices fund the smaller grants. The competition for grants is intense, especially at Headquarters which often receives between 150 and 200 proposals and will fund 10 to12 grants, or less than 10% of the applicants. The average size of Headquarters grants is about $79,000. EPA grants in excess of $100,000 are seldom awarded through this program and proposals for Headquarters grants over $150,000 will not be considered.

Regional offices usually receive fewer proposals than Headquarters and typically fund between 12 and 15 grants per Region, or about 30% of the applications received. The total number of grants awarded in all Regions nationwide will exceed 100 grants. Most of those grants will be in the $10,000 to $15,000 range and none will exceed $50,000. Proposals for Regional grants over $50,000 will not be considered.

A large share of the annual funding is distributed through the Regional office grants because Congress directs EPA to award small grants to local schools and organizations. By limiting the size of the grants, EPA is able to reach more applicant organizations.

C. Other Funding Provisions

EPA reserves the right to reject all proposals and make no awards under this announcement. EPA also reserves the right to fund additional awards for up to 4-months after the original selections are made, if additional funding becomes available, and consistent with Agency policy. In addition, EPA reserves the right to partially fund proposals by funding discrete activities, portions, or phases of a proposed project. If EPA decides to partially fund a proposal, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated or selected for award, and that maintains the integrity of the competition and the evaluation/selection process.

D. Multiple or Repeat Proposals

An organization may submit more than one proposal to Headquarters and or a Regional office if the proposals are for different projects. No organization will be awarded more than one grant for the same project during the same fiscal year. Applicants who received one of these grants in the past may submit a new proposal for a different project. All proposals will be considered new and will be evaluated based upon the specific criteria set forth in this solicitation. Only those with the highest scores each annual cycle will receive grants. Due to limited resources, EPA does not sustain projects beyond the initial grant period. This grant program is geared toward providing seed money to initiate new projects or to advance existing projects that are ''new'' in some way, such as reaching new audiences or new locations. If you received a grant from this program in the past, it is essential that you explain how your current proposal is new.

Section III. Eligibility Information

A. Threshold Eligibility Criteria

All proposals will first be reviewed for compliance with threshold eligibility factors, which are described in more detail below. In addition, applications must be received by EPA on or before the solicitation closing date published in Section IV of this announcement. Applications received after the published closing date will be returned to the sender without further consideration.

Proposals must meet all of the threshold factors in order to be eligible for funding. Only those proposals that are deemed eligible will be reviewed based on the factors identified in Section V(B). The threshold criteria are:

(1) Proposal must substantially comply with the submission instructions in Section IV(D);

(2) The Applicant must be an eligible organization (see Section III(B) for more details on eligible applicants);

(3) The Applicant must meet the non-federal match (see Section III(C) below for more information);

(4)(a) For Headquarters grants, the Applicant requests $150,000 or less; (b) For Regional grants, the Applicant requests $50,000 or less;

(5) The Applicant must propose a project that meets the definition of environmental education (see Section I(C) for more information);

(6) The Applicant must meet at least one of the educational priorities (See Section I(D) for more information); and

(7) The Applicant must propose to perform an eligible activity (See Section III(D) for more information)

B. Eligible Applicants

Any local education agency, college or university, state education or environmental agency, not-for-profit organization as described in Section 501(c)(3) of the Internal Revenue Code, or noncommercial educational broadcasting entity may submit a proposal. Applicant organizations must be located in the United States or territories and the majority of the educational activities must take place in the United States and territories, Canada, and/or Mexico.

''Tribal education agencies'' which may also apply include a school or community college which is controlled by an Indian tribe, band, or nation, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs. Tribal organizations do not qualify unless they meet this criteria or the not-for-profit criteria listed above. The terms for eligibility are defined in Section 3 of the Act and 40 CFR 47.105.

A teacher's school district, an educator's nonprofit organization, or a faculty member's college or university may apply, but an individual teacher or faculty member *may not* apply.

C. Matching Funds

Non-federal matching funds of at least 25% of the total cost of the grant project are required. The matching requirement is explained in detail in Section IV(A)(4) under Budget and Non-Federal Match.

D. Ineligible Activities

Environmental education funds cannot be used for:

(1) Technical training of environmental management professionals;

(2) Environmental ''information'' projects that have no educational component, as described above in Section I(C);

(3) Lobbying or political activities as defined in OMB Circulars A–21, A–87 and A–122;

(4) Advocacy promoting a particular point of view or course of action;

(5) Non-educational research and development; or

(6) Construction projects—EPA will not fund construction activities such as the acquisition of real property (e.g., buildings) or the construction or modification of any building. EPA may, however, fund activities such as creating a nature trail or building a bird watching station as long as these items are an integral part of the environmental education project, and the cost is a

relatively small percentage of the total amount of federal funds requested.

Section IV. Application and Submission Information

A. Content and Form of Proposal

The proposal must contain the following information: (1) Two standard federal application and budget forms; (2) project summary sheet; (3) project description; (4) project evaluation plan and criteria; (5) detailed budget; (6) timeline; (7) description of organization and personnel; and (8) letters of commitment (if you have partner organizations). Please follow the instructions below and do not submit additional items. EPA must make copies of your proposal for use by grant reviewers. Unnecessary cover letters, attachments, divider sheets, forms, or binders create a paperwork burden for the reviewers and are not helpful. The proposal must explicitly describe the applicant's proposed project and specifically address each of the evaluation factors disclosed in Section V(B).

Federal Forms: Application for Federal Assistance (SF–424) and Budget Information (SF–424A): These two forms are required for all federal grants and must be submitted on the front of your proposal. The two forms, *along with instructions specific to this program* and examples, are included at the end of this notice. These two forms can also be completed on our web site and printed off with your data and dollars included. Only finalists will be asked to submit additional federal forms necessary to process a federal grant.

Work Plan and Appendices: A work plan describes your proposed project, evaluation process, and your budget. Appendices establish your timeline, your qualifications, and any partnerships with other organizations. Grant reviewers look at many proposals, and providing your information in the order listed below prevents information from being overlooked. The work plan and appendices must address the ranking factors identified in Section V(B).

(1) *Project Summary:* Provide a one page overview of your entire project in the following format; pages in excess of one will not be reviewed.

(a) *Organization:* Briefly describe: (1) Your organization, and (2) list your key partners for this grant, if applicable. Partnerships are encouraged and considered to be a major factor in the success of projects. Full details about your organization and staff will be an appendix.

(b) *Summary Statement:* Provide an overview of your project that explains the concept and your goals and objectives. This should be a basic explanation in layman's terms to provide a reviewer with an understanding of the purpose and expected outcomes of your educational project. If a person unfamiliar with your project reads this paragraph and cannot grasp your basic concept, then you have not achieved what is requested here.

(c) *Educational Priority:* Identify which priority listed in Section I you will address, such as education reform or teaching skills. Proposals may address more than one educational priority for the same project; however, EPA cautions against losing focus on projects. Evaluation panels often select projects with a clearly defined purpose, rather than projects that attempt to address multiple priorities at the expense of a quality outcome.

(d) *Delivery Method:* Explain how you will reach your audience, such as workshops, conferences, field trips, interactive programs, etc.

(e) *Audience:* Describe the demographics of your target audience including the number and types you expect to reach, such as teachers and/or students and specific grade levels, health care providers, the general public, etc.

(f) *Costs:* List the types of activities on which you will spend the EPA portion of the grant funds.

(2) *Project Description:* Describe precisely what your project will achieve—why, who, when, how, and with what. Explain each aspect of your proposal clearly and address each topic below. If you choose to reorder the following paragraphs, include the headings below or you risk the possibility of information being overlooked when the project is scored. Please address all of the following to ensure that grant reviewers can fully comprehend and score your project correctly.

(a) *Why:* (i) Explain the purpose of your project and how it will address an educational priority listed in Section I, such as teaching skills.

(ii) Identify your environmental issue, such as energy conservation, clean air or water, ecosystem protection, or cross-cutting topics. Explain the importance to your community, state, or Region. If the project has the potential for wide application, and/or can serve as a model for use in other locations with a similar audience, explain how.

(iii) *Stewardship:* Explain how your project will increase environmental stewardship as defined in Section I.

(b) *Who:* Explain who will manage and conduct the project; also identify the target audience, the number to be trained, and demonstrate an understanding of the needs of that audience. *Important:* Explain your recruitment plan to attract your target audience, and clarify any incentives used such as stipends and continuing education credits.

(c) *How:* Explain your strategy, objectives (outputs and outcomes), activities, and delivery methods to establish that you have realistic goals and objectives and will use effective methods to achieve them. Clarify for the reviewers how you will complete all basic steps from beginning to end. Do not omit steps that lead up to or follow the actual delivery methods; e.g., if you plan to make a presentation about your project at a local or national conference, specify where.

(d) *With What:* Demonstrate that the project uses or produces quality educational products or methods that teach critical-thinking, problem-solving, and decision-making skills. Please note the following restrictions on the development of educational materials.

Please note: Guidance on Curriculum Development. EPA strongly encourages applicants to use and disseminate existing environmental education materials (curricula, training materials, activity books, etc.) rather than designing new materials, because experts indicate that a significant amount of quality educational materials have already been developed and are under-utilized. EPA will consider funding new materials only where the applicant demonstrates that there is a need; *e.g.*, that existing educational materials cannot be adapted well to a particular local environmental concern or audience, or existing materials are not otherwise accessible. The applicant must specify what steps they have taken to determine this need, *e.g.*, you may cite a conference where this need was discussed, the results of inquiries made within your community or with various educational institutions, or a research paper or other published document. Further, EPA recommends the use of a publication entitled *Environmental Education Materials: Guidelines for Excellence* which was developed in part with EPA funding. These guidelines contain recommendations for developing and selecting quality environmental education materials. On our Web site under ''Resources'' you may view these guidelines and find information about ordering copies. (**Please note:** Provide up to 5 pages total to address both the Project Description and the Project Evaluation; pages in excess of that will not be reviewed.)

(3) *Project Evaluation:* Explain how you will ensure that you are meeting the goals, objectives, outputs, and outcomes of your project. Evaluation plans may be quantitative and/or qualitative and may

include, for example, evaluation tools, observation, or outside consultation. Pre and post-training questionnaires are recommended to determine if your performance measures for learning are being satisfied. **Please Note:** Section I(B) explains the EPA Strategic Plan and that all grants must support the EPA goals of promoting environmental stewardship and/or preventing pollution, and must result in improved environmental results over time.

In this section, you must explain your plans for tracking and measuring progress on your outputs and your short-term outcomes. If your medium- and long-term outcomes can also be measured within the project period, explain your plans for that evaluation as well. (**Please note:** As mentioned above, provide up to 5 pages total to address both the Project Description and the Project Evaluation; pages in excess of that will not be reviewed.)

(4) *Budget and Non-Federal Match:* Create a detailed budget to clarify in separate columns how EPA funds and non-federal matching funds will be used for specific items or activities. In the detailed budget, use the same order and headings listed on the Budget Form 424A; *i.e.*, personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs, where appropriate. Provide details for each expense, such as personnel or travel, and make sure you factor in the costs for all proposed activities and clarify which will be paid by EPA. Smaller grants with uncomplicated budgets may have dollar columns (EPA and matching funds) that list only a few expenses and items. (See detailed instructions for Budget Form 424A at the back of this Notice).

Please note the following funding restrictions:

—Indirect costs may be requested if your organization has an Indirect Cost Rate Agreement on file with a Federal Agency, subject to audit

— Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.

—EPA will not fund the acquisition of real property (including buildings) or the construction or modification of any building.

Matching Funds Explanation: Non-federal matching funds must be *at least* 25% of the *total cost* of the project. The match must be for an allowable cost and may be provided by the applicant or a partner organization or institution. The match may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other *verifiable* costs and this value must be carefully documented. In the case of salaries, applicants may use either minimum wage or fair market value. If the match is provided by a partner organization, the applicant is still responsible for proper accountability and documentation. All grants are subject to federal audit.

Important: The matching non-federal share is a percentage of the entire cost of the project. For example, if the 75% federal portion is $10,000, then the entire project should, at a minimum, have a budget of $13,333, with the recipient providing a contribution of $3,333. To assure that your match is sufficient, simply divide the federally requested amount by three. Your match must be at least one-third of the requested amount to be sufficient.

Other Federal Funds: You may use other federal funds in addition to those provided by this program, but not for activities that EPA is funding. You may not use any federal funds to meet any part of the required 25% match described above, unless it is specifically authorized by statute. If you have already been awarded federal funds for a project for which you are seeking additional support from this program, you must indicate those funds in the budget section of the work plan. You must also identify the project officer, agency, office, address, phone number, and the amount of the federal funds.

(5) *Appendices:*

(a) *Time*line—Include a ''timeline'' to link your activities to a clear project schedule and indicate at what point over the months of your budget period each action, event, milestone, product development, etc. will occur.

(b) *Background of Organization and Key Personnel*—Attach a description of the programmatic capabilities of the lead organization and of partner organizations with significant roles in the project (see scoring criteria in Section V(B) for specific factors to address). Also, include a paragraph describing qualifications of each of the key personnel conducting the project. If you send resumes, please keep it to a maximum of 3 one-page resumes.

(c) *Letters of Commitment*—If the applicant organization has partners, such as schools, state agencies, or other organizations, include letters of commitment from partners explaining their role in the proposed project. Do not include letters of endorsement or recommendation or have them mailed in later; they will not be considered in evaluating proposals.

Please do not submit other appendices or attachments. EPA may request such items if your proposal is among the finalists under consideration for funding.

B. Page Limits

As explained in Section IV.A, the entire narrative portion of the Work Plan (which includes the Project Summary, Project Description, and Project Evaluation) shall not exceed 6 pages—the Project Summary (1 page) and up to 5 pages total for both the Project Description and Project Evaluation. ''One page'' refers to one side of a single-spaced typed page. The pages must be letter-sized (8½ x 11 inches), with margins at least one-half inch wide and with a font size no smaller than 10 points. The Detailed Budget, Timeline, and Appendices are not included in the page limit.

C. Submission Requirements and Copies

The applicant must submit one original and two copies of the proposal (a signed SF–424, an SF–424A, a work plan, a detailed budget, and the appendices listed above). Do not include other attachments such as cover letters, tables of contents, additional federal forms, divider sheets, or appendices other than those listed above. Your pages should be sorted as listed in Section IV(A) with the SF–424 being the first page of your proposal and signed by a person authorized to receive funds. Blue ink for signatures is preferred. Proposals must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, on white paper, and with page numbers because many proposals get copied at one time.

Forms: If you receive this solicitation electronically and if the standard federal forms for Application (SF–424) and Budget (SF–424A) cannot be printed by your equipment, you may call or write the appropriate EPA office listed at the end of this document. If you locate the federal forms elsewhere, please read our instructions which have been modified for this grant program.

D. Submission Deadline and Project Period

(1) Due Date—The closing date and time for submission of completed applications is November 23, 2005, 5:00 p.m. based on the local time zone of the office for which the proposal is being submitted. All applications, however transmitted, must be received by Headquarters or a Regional Office by the

closing date and time in order to receive consideration.

Applications may be submitted by U.S. Postal Service, express mail (such as FedEx and UPS), hand delivery, or courier service. Please see Section VII for additional information.

(2) Start Date and Length of Projects—July 1, 2006 is the earliest start date that applicants should plan on and enter on their application forms and timeline. Budget periods cannot exceed 1 year for small grants of $10,000 or less. EPA prefers a 1-year budget period for larger grants, but will accept a budget period of up to 2 years, if the project timeline clarifies that more than a year is necessary for full implementation of the project.

E. Mailing Addresses

Complete address information for Headquarters and the Regional Offices is provided in Section VII.

F. Other Submission Information

(1) DUNS Identification Number: All organizations applying for federal grant funds must have one of these numbers which can be acquired by calling Dun and Bradstreet toll free at 1–866–705–5711 or by visiting their Web site at *http://www.dnb.com*.

(2) Confidential Business Information: In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR Part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure.

Section V. Application Review Information

A. Threshold Factors

Proposals will first be evaluated based on the threshold eligibility factors stated in Section III. The threshold eligibility review of Headquarters applications will be conducted by external environmental educators approved by EPA. The threshold eligibility review of Regional applications will be conducted by EPA officials or external environmental educators. Proposals that fail to meet all of the threshold eligibility factors will not be further considered and applicants will be notified accordingly. Headquarters and Regional proposals that meet all of the threshold eligibility factors in Section III will then be evaluated based on the criteria described below.

B. Full Evaluation and Scoring

Only those proposals that meet all of the threshold eligibility factors in Section III will be evaluated based on the factors below. Headquarters proposals will be reviewed by EPA officials and external environmental educators approved by EPA. Regional proposals will be reviewed by EPA officials, and external environmental educators approved by EPA may also be used. At the conclusion of the evaluation phase, the proposals will be ranked based upon the results of the evaluation. A maximum of 100 points is available as follows:

(1) Project Summary—Maximum Score: 10 points—The project summary will be evaluated based on the applicant's overview of the entire project as addressed in the Project Summary described in Section IV(A)(1).

(2) Project Description—Maximum Score: 40 points—Under this factor, proposals will be evaluated based on how well the applicant explained the need for the proposed project (10 points); how well the applicant designed and described the proposed project (10 points); how effectively the proposed project will accomplish the stated goals (10 points); and how well the applicant described specific tasks for the successful achievement of stated goals (10 points).

(3) Project Evaluation—Maximum Score: 15 points—The project evaluation score will be based on an assessment of: (a) The applicant's design and strategy for evaluation measures (5 points); (b) how effectively the applicant will measure or track its progress towards achieving the outputs and outcomes in Section I of this announcement (10 points).

(4) Budget—Maximum Score: 15 points—Under this factor, proposals will be evaluated based on: (a) How well the budget information clearly and accurately shows how funds will be used (5 points); (b) whether the funding request is reasonable given the activities proposed (5 points); and (c) whether the funding provides a good return on the investment (5 points).

(5) Appendices—Maximum Score: 20 points—Under this factor, proposals will be evaluated based on:

(a) Timeline: How well the timeline clarifies the workplan and establishes for reviewers that the project is well thought out and feasible as planned (5 points).

(b) Partnerships: The extent of partnership, and the extent to which a firm commitment is made by the partner to provide services, facilities, or funding (5 points).

(c) Programmatic Capability and Technical Experience: The applicant's demonstrated ability to successfully complete the proposed project based on its: (1) Past performance in successfully completing educational projects similar to the proposed project; (2) history of meeting reporting requirements on prior or current grants and submitting acceptable final technical reports; (3) organizational experience and plan for timely and successfully achieving the objectives of the project; and (4) staff expertise/qualifications, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the project. Under this factor, EPA will consider information provided by the applicant and may consider information from other sources including EPA agency files. In addition, applicants who do not have any relevant past performance or reporting history will receive a neutral evaluation for those elements of programmatic capability (10 points).

C. Final Selections

After the proposals are evaluated and scored by the reviewers, as described above, the respective Recommending Officials (EPA staff in the Office of Public Affairs for proposals submitted to Headquarters, and EPA Regional staff in the Office of Public Affairs or the equivalent for proposals submitted to the Regional offices) will select, from among the highest numerically ranked proposals in Headquarters and each of the Regions, a group of Headquarters and Regional finalists to recommend for award to the respective Headquarters and Regional Approving Officials. In determining which finalists to recommend for award (to the respective Headquarters and Regional Approving Officials) from among the highest numerically ranked proposals, the Recommending Officials will consider the following factors:

(1) Effectiveness of collaborative activities and partnerships, as needed to successfully implement the project;

(2) Environmental and educational importance of the activity or product;

(3) Effectiveness of the delivery mechanism (*i.e.*, workshop, conference, etc.);

(4) Cost effectiveness of the proposal; and

(5) Geographic distribution of projects.

The Approving Official for Headquarters awards is a senior-level official in the Office of the Administrator. The Approving Official for Regional awards is a senior-level official within the

Office of the Regional Administrator. In making the final funding decisions, the Approving Officials will consider the recommendations of the Recommending Officials and may also consider geographical balance and program balance.

Section VI. Award Administration Information

A. Notification to Applicants

Applicants will receive a confirmation that EPA has received their proposal after EPA has entered information about all proposals into a database, usually within 2 months after receipt. EPA will contact the highest scoring finalists to request additional federal forms and other information as recommended by reviewers; and send non-selection letters to the others. If selected for a grant, an award package will be mailed to the recipient organization explaining the responsibilities of the grantee. Non-selection letters will be sent within 15 business days after a decision of non-selection.

B. Responsible Officials

Projects must be performed by the applicant or by a person satisfactory to the applicant and EPA. All proposals must identify any person other than the applicant who will assist in carrying out the project. These individuals are responsible for receiving the grant award agreement from EPA and ensuring that all grant conditions are satisfied. Recipients are responsible for the successful completion of the project.

C. Incurring Costs

Grant recipients may begin incurring allowable costs on the start date identified in the EPA grant award agreement. Activities must be completed and funds spent within the time frames specified in the award agreement. EPA grant funds may be used only for the purposes set forth in the grant agreement and must conform to Federal cost principles contained in OMB Circulars A–87; A–122; and A–21, as appropriate. Ineligible costs will be deducted from the final grant award.

D. Reports and Work Products

Specific financial, technical, and other reporting requirements to measure the grant recipient's progress will be identified in the EPA grant award agreement. Grant recipients must submit formal quarterly or semi-annual progress reports, as instructed in the award agreement. Also, two copies of a final report and two copies of all work products must be sent to the EPA project officer within 90 days after the expiration of the budget period. This submission will be accepted as the final requirement, unless the EPA project officer notifies you that changes must be made or that tasks are incomplete.

E. Regulatory References

The Environmental Education Grant Program Regulations provide additional information on EPA's administration of this program (57 FR 8390; Title 40 CFR, part 47). Also, EPA's general assistance regulations at 40 CFR part 31 apply to state, local, and Indian tribal governments and 40 CFR part 30 applies to all other applicants such as nonprofit organizations.

F. Other Procedures

(1) Pre-application assistance: None planned.

(2) Dispute Resolution: Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR (**Federal Register**) 3629, 3630 (January 26, 2005) which can be found at *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1371.htm*.

G. Other Funding

Please note that this is a very competitive grant program. Limited funding is available and many qualified grant applications will not be funded by EPA even though efforts will be made to secure funding from all available sources within the Agency. If your project is not funded, you may wish to review other available grant programs on the main EPA Web site and in the *Catalog of Federal Domestic Assistance* at *http://www.cfda.gov* which lists funding opportunities. Nonprofit applicants that are recommended for funding will be subject to pre-award administrative capability reviews consistent with Sections 8.b, 8.c, and 9.d of EPA Order 5700.8.

Section VII. Agency Contacts

A. Internet: http://www.epa.gov/enviroed

Please visit our Web site where you can view and download: Federal forms, tips for developing successful grant applications, descriptions of projects funded under this program by state, and other education links and resource materials. The ''Excellence in EE'' series of publications listed there includes guidelines for: Developing and evaluating educational materials; the initial preparation of environmental educators; and using environmental education in grades K–12 to support state and local education reform goals.

B. Mailing List for Environmental Education Grants

If you wish to be notified when the next Solicitation Notice is issued, you should visit our Web site (*http://www.epa.gov/enviroed*) where you can log in for notification of a new notice. Or you can be added to a regular mailing list for a printed copy by mailing your request along with your name, organization, address, and phone number to: Environmental Education Grant Program (Year 2007), EPA Office of Environmental Education (1704 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: September 27, 2005.

Cece Kremer,

Deputy Chief of Staff, Office of the Administrator.

Mailing Addresses and Information

Applicants who need clarification about specific requirements in this Solicitation Notice may contact the Environmental Education Office in Washington, DC for grant requests of more than $50,000 in federal funds, or their EPA Regional office for grant requests of $50,000 or less. Applications may be submitted by U.S. Postal Service, express mail (such as FedEx and UPS), and hand delivery or courier service. Complete address information for Headquarters and the Regional Offices is provided below.

U.S. EPA Headquarters—For Proposals Requesting More Than $50,000 From EPA

For submission by U.S. Postal Service: Environmental Education Grant Program, Office of Environmental Education (1704 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

For submission by express mail (Fed Ex and UPS), hand delivery, or courier service: Office of Environmental Education (Room 1426A North), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. (202) 564–0443.

Information: Diane Berger or Sheri Jojokian (202) 564–0451.

U.S. EPA Regional Offices—For Proposals Requesting $50,000 or Less From EPA

Mail the proposal to the Regional Office where the project will take place, rather than where the applicant is located, if these locations are different.

The addresses provided below are for proposals submitted by U.S. Postal Service. If you are interested in submitting your proposal by express mail, hand delivery, or courier service, please contact the Regional Office for additional information.

EPA Region I—CT, ME, MA, NH, RI, VT

Mail proposals to: U.S. EPA, Region 1, Enviro Education Grants (MGM), 1 Congress Street, Suite 1100, Boston, MA 02114.

Information: Kristen Conroy, (617) 918–1069, *conroy.kristen@epa.gov*.

EPA Region II—NJ, NY, PR, VI

Mail proposals to: U.S. EPA, Region II, Enviro Education Grants, 26th Floor, 290 Broadway, New York, NY 10007–1866.

Information: Teresa Ippolito, (212) 637–3671, *ippolito.teresa@epa.gov*.

EPA Region III—DC, DE, MD, PA, VA, WV

Mail proposals to: U.S. EPA, Region III, Enviro Education Grants, Grants Management Section (3PM70), 1650 Arch Street, Philadelphia, PA 19103–2029.

Information: Ruth Corcino-Woodruff, (215) 814–5737, *corcino-woodruff.ruth@epa.gov*.

EPA Region IV—AL, FL, GA, KY, MS, NC, SC, TN

Mail proposals to: U.S. EPA, Region IV, Enviro Education Grants, Office of Public Affairs, 61 Forsyth Street, SW., Atlanta, GA 30303.

Information: Alice Chastain, (404) 562–8314, *chastain.alice@epa.gov*.

EPA Region V—IL, IN, MI, MN, OH, WI

Mail proposals to: U.S. EPA, Region V, Enviro Education Grants (P–19J), 77 West Jackson Boulevard, Chicago, IL 60604.

Information: Megan Gavin, (312) 353–5282, *gavin.megan@epa.gov*.

EPA Region VI—AR, LA, NM, OK, TX

Mail proposals to: U.S. EPA, Region VI, Enviro Education Grants (6XA), 1445 Ross Avenue, Dallas, TX 75202.

Information: Bonnie King, (214) 665–2215, *king.bonita@epa.gov*.

Region VII—IA, KS, MO, NE

Mail proposal to: U.S. EPA, Region VII, Enviro Education Grants, Office of External Programs, 901 N. 5th Street, Kansas City, KS 66101.

Information: Denise Morrison, (913) 551–7402, *morrison.denise@epa.gov*.

Region VIII—CO, MT, ND, SD, UT, WY

Mail proposals to: U.S. EPA, Region VIII, Enviro Education Grants, 999 18th Street (80C), Denver, CO 80202–2466.

Information: Christine Vigil, (800) 227–8917 ext. 6605, *vigil.christine@epa.gov*.

Region IX—AZ, CA, HI, NV, American Samoa, Guam

Mail proposals to: U.S. EPA, Region IX, Enviro Education Grants (PPA–2), 75 Hawthorne Street, San Francisco, CA 94105.

Information: Sharon Jang, (415) 947–4252, *jang.sharon@epa.gov*.

Region X—AK, ID, OR, WA

Mail proposals to: U.S. EPA, Region X, Enviro Education Grants, Public Environmental Resource Center, 1200 Sixth Avenue (ETPA–124), Seattle, WA 98101.

Information: Sally Hanft, (800) 424–4372, (206) 553–1207,*hanft.sally@epa.gov*.

Appendix A—Federal Forms and Instructions

Instructions for the SF 424–Application

This is a standard Federal form to be used by applicants as a required face sheet for the Environmental Education Grants Program. These instructions are modified for this program only and do not apply to any other Federal program.

1. Choose ''Non-Construction''—under Application—construction costs are unallowable.

2. Fill in the date you forward application to EPA. Leave ''Applicant Identifier'' blank as it will be a federal ID number filled in by EPA. If you have a state ID number, it goes on the line directly below.

3. State use only (if applicable) or leave blank.

4. DUNS Number: All organizations making application for federal grant funds must have a DUNS Identification Number. Enter it into the block entitled ''Federal Identifier'' or if you use a form from another Web site, you may enter the DUNS number in Section 5. You may acquire a DUNS number via telephone or Web site from Dun and Bradstreet. The Web site is *http://www.dnb.com* and the toll free phone number is 1–866–705–5711.

5. Legal name of applicant organization, name of primary organizational unit which will undertake the grant activity, complete address of the applicant organization, and name, telephone, FAX number and e-mail address of the person to contact on matters related to this application. You do not have to list the ''county'' as part of the address.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer Services number for the IRS.

7. Enter the appropriate letter in the space provided and if you are a not-for-profit organization you must be categorized as a 501(c)(3) by IRS to be eligible for this grant program

8. Check the box marked ''new'' since all proposals must be for new projects.

9. Enter U.S. Environmental Protection Agency.

10. Enter 66.951 Environmental Education Grants Program

11. Enter a descriptive title of the project—please make it brief and also helpful as a descriptive title to be used in press releases and grant profiles which go onto our web site.

12. List only the largest areas affected by the project (*e.g.*, State, counties, cities).

13. Please see Section I(A) in Solicitation Notice for specifics on project/budget periods.

14. In (a) list the Congressional District where the applicant organization is located; and in (b) any District(s) affected by the program or project. If your project covers many areas, several congressional districts will be listed. If it covers the entire state, simply put in STATEWIDE. If you are not sure about the congressional district, call the County Voter Registration Department.

15. Amount requested or to be contributed during the funding/budget period by each contributor. Line (a) is for the amount of money you are requesting from EPA. Lines (b–e) are for the amounts either you or another organization are providing for this project. Line (f) is for any program income which you expect will be generated by this project. Examples of program income are fees for services performed, income generated from the sale of materials produced with the grant funds, or admission fees to a conference financed by the grant funds. The total of lines (b–e) must be at least 25% of line (g), because this grant program has a matching requirement of 25% of the TOTAL ALLOWABLE PROJECT COSTS. Divide line (a) by three to determine the smallest match allowable for your proposal. Value of in-kind contributions should be included on appropriate lines as applicable. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Check (b) (NO) since this program is exempt from this requirement.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. The authorized representative is the person who is able to contract or obligate your agency to the terms and conditions of the grant. (Please sign with blue ink.) A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Instructions for the SF–424A—Budget

This is a standard federal form used by applicants as a basic budget. These instructions are modified for this grant program only and do *not* apply to any other federal Program.

Section A—Budget Summary—Do not complete—Leave blank for this program.

Section B—Budget Categories—Complete Columns (1), (2) and (5) as stated below.

All funds requested and contributed as a match must be listed under the appropriate Object Class categories listed on this form. Please round figures to the nearest dollar. Include federal funds in column (1); Non-federal (matching) funds in column (2); then

add sideways and put the totals in column (5) for all categories. Many applicants will have blank lines in some Object Class Categories and no applicant should use line 6(g) Construction because it is an unallowable cost for this program. **NOTE:** Your total dollar figures on the Form 424 and 424A and detailed budget should all be the same. Your detailed budget should list costs under the same object class categories used on this form, but with significantly more information.

Line 6(i)—Show the totals of lines 6(a) through 6(h) in each column.

Line 6(j)—Show the amount of indirect costs, but ONLY if your organization already has an Indirect Cost Rate Agreement with a Federal Agency and has it on file, subject to audit.

Line 6(k)—Enter the total amount of Lines 6(i) and 6(j).

Line 7—*Program Income*—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature and source of income in the detailed budget description and your planned use of the funds to enhance your project.

Detailed Itemization of Costs: The proposal must also contain a detailed budget description as specified in Section IV(A)(4) of this Notice, and should conform to the following:

Personnel: List all participants in the project by position title. Give the percentage of the budget period for which they will be fully employed on the project (*e.g.*, half-time for half the budget period equals 25%, full-time for half the budget period equals 50%, etc.). The detail should include for each person: Percentage of Time on project X Annual Salary = Personnel Cost. List this data for all personnel and then put the total on the Form 424A.

Fringe Benefits: Indicate percentage of basic salary and what it includes, such as health insurance and retirement.

Travel: If travel is budgeted, show trips, travelers, destinations, and purpose of travel as well as costs.

Equipment: Identify each piece of equipment with a cost of $5,000 or more per unit to be purchased and explain the purpose for which it will be used. List less costly items under supplies.

Supplies: List categories of supplies; *e.g.*, laboratory supplies and office supplies for items that can be grouped. If the supply budget is less than 2% of total costs, you do not need to itemize.

Contractual: Specify the nature and cost of such services and how costs were determined such as by using estimates or historical information. EPA may require review of contracts for personal services prior to their execution to assure that all costs are reasonable and necessary to the project.

Construction: Not allowable for this program.

Other: Specify all other costs under this category.

Indirect Costs: Not allowable unless you have an application on file with a federal agency. Provide the percentage rate used and an explanation of how indirect charges were calculated for this project.

Income: Describe the source of your income and how it will be used to enhance your project.

Appendix B—Checklist for Proposal and Performance Measures

Checklist for Content of Proposal—Please submit only the following documents in this order:

____Standard Federal Application Form (SF–424).

____Budget Form (SF–424A)—Section B—Use 3 columns—EPA share, match, and total.

____Project Summary Sheet—one page—format required.

____Project Description (why, who, how, and with what)—Format optional—use headings to help reviewers to find everything.

____Project Evaluation Criteria for key outputs and outcomes.

____Detailed Budget—Use two columns to show EPA and non-Federal portions for each expense. Use the same order and categories used on 424A with much greater detail.

____Timeline—List all major activities and milestones over project period.

____Organization and staffing—Summarize background information.

____Letters from partners taking responsibility for tasks or funding (optional).

Performance Measures

This chart provides examples of some of the outputs and outcomes Environmental Education Grants may produce. It is intended as guidance to define terms used in this announcement. Outputs and short-term outcomes must be accomplished and reported to EPA within the project reporting period. Progress should begin on medium-or long-term outcomes.

PROJECT PERFORMANCE MEASURES

Outputs	Outcomes		
Short-term	Short-term	Medium-term	Long-term
Community education projects: Recruitment, Training, Workshops/ Clinics, Field Trips, Educational Materials, Videos, CDs, Web sites, Conferences, Assessments.	Students and communities learn skills in environmental projects; Teachers are motivated to train others on environmental topics; Increased environmental knowledge; State organizations develop capacity building efforts; Increased access to environmental education resources and programs.	Students and communities make decisions that improve their environment; Specific actions are taken to improve the environment; Environmental stewardship is underway.	Promotion of environmental stewardship. Improved environmental literacy. Changes in awareness about decisions that affect the environment. Establishment of sustainable environmental education programs.

BILLING CODE 9110–13–P

EXAMPLE

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED 11/15/05	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	DUNS #: 152784520

5. APPLICANT INFORMATION

Legal Name: Wythe County School System	Organizational Unit: Office of Teacher Training
Address *(give city, county, State, and zip code)*: 219 Main Street, Wytheville, VA 12345	Name and telephone number of person to be contacted on matters involving this application *(give area code)*: Name Janet Jones (Tel) 540-223-4567; Email jones.j@wcs.edu (Fax) 540-223-7890

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: 12-3456789

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* B

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Non-Profit; O. Other (Specify) _____

8. TYPE OF APPLICATION:

☑ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other*(specify)*: _____

9. NAME OF FEDERAL AGENCY:

U.S. Environmental Protection Agency

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66-951

TITLE: Environmental Education Grant

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

"Eco-Blue" Teacher Training -- Ecosystems in the Blue Ridge Mountains

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

3 Counties: Wythe, Smith, Green

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date 7/1/06	Ending Date 6/30/07	a. Applicant 02	b. Project 02, 04, 12

15. ESTIMATED FUNDING:

a. Federal	$ 10,000.00
b. Applicant	$ 3,000.00
c. State	$ .00
d. Local	$ .00
e. Other	$ 334.00
f. Program Income	$ .00
g. TOTAL	$ 13,334.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
John Smith	Superintendent of Schools	(540) 223-4231
d. Signature of Authorized Representative: *John Smith*		e. Date Signed: 11/15/05

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No.: 0348-0044

SECTION A - BUDGET SUMMARY

EXAMPLE

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1) Federal Funds	(2) Non-Federal Match		Total (5)
a. Personnel	$ 4,200	$ 1,600		$ 5,800
b. Fringe Benefits	525	200		725
c. Travel	500	200		700
d. Equipment				
e. Supplies	2,300	1,000		3,300
f. Contractual	1,075			1,075
g. Construction	XXXXXXXXXXXX	XXXXXXXXXXXX		XXXXXXXXXXXX
h. Other	1,400	334		1,734
i. Total Direct Charge (sum of 6a-6h)	10,000.00	3,334.00		13,334.00
j. Indirect Charges				
k. TOTALS (sum of 6i and 6j)	$ 10,000.00	$ 3,334.00		$ 13,334.00
7. Program Income	$	$		$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	DUNS #:

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)* Name (Tel) Email (Fax)

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Non-Profit
O. Other (Specify) _____

8. TYPE OF APPLICATION:

☑ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

U.S. Environmental Protection Agency

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

66 — 951

TITLE: Environmental Education Grant

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ 00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No.: 0348-0044

SECTION A - BUDGET SUMMARY

[redacted]

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1) Federal Funds	(2) Non-Federal Match		Total (5)
a. Personnel	$	$		$
b. Fringe Benefits				
c. Travel				
d. Equipment				
e. Supplies				
f. Contractual				
g. Construction	XXXXXXXXXXXX	XXXXXXXXXXXX		XXXXXXXXXXXX
h. Other				
i. Total Direct Charge (sum of 6a-6h)	.00	.00		.00
j. Indirect Charges				
k. TOTALS (sum of 6i and 6j)	$ .00	$ .00		$ .00
7. Program Income	$	$		$

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[FR Doc. 05–19708 Filed 9–29–05; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0269; FRL–7739–2]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on October 26, 2005. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on October 26, 2005, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), Crystal Mall #2, Room 1126 (Fishbowl), 1801 S. Bell St., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8578; fax number: (703) 308–6309; e-mail address: *echeverria.marietta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0269. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

On a quarterly interval, the Exposure Modeling Workgroup meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPP–2005–0269, must be received on or before October 31, 2005.

IV. Tentative Agenda

1. Welcome and Introductions
2. Old Action Items
3. Brief Updates
- PRZM3.12.2 Evaluation (J. Hetrick)
- EFED's Modeling Scenarios (M. Corbin)
- Spray Drift Update (N. Birchfield)

4. Major Topics
- The FOCUS Version Control Process (Russell Jones, Bayer CropScience)
- GIS Tool for Associating Estuarine/Marine Habitat with Agricultural Pesticide Uses (Kris Garber and Tim Negley, SRC)
- National Geo-spatial Data Policy (Kevin Kirby, EPA/OEI)
- The MARIA Spatial Water Quality Modeling Framework (James Ascough, USDA-ARS-NPA)
- Framework for Spatially Explicit Risk Assessments (Nelson Thurman and Mark Corbin, EPA/OPP)
- National Hydrography Dataset (NHDplus) (TBD)
- PLUS: Geospatial Leaching Assessment Tool (Mark Cheplick, Waterborne)

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 22, 2005.

Steve Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 05–19491 Filed 9–29–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005–0046; FRL–7739–3]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the meeting of the Forum on State and Tribal Toxics Action (FOSTTA) to enable state and tribal leaders to collaborate with EPA on environmental protection and pollution prevention issues. Representatives and invited guests of the Chemical Information and Management Project (CIMP), the Pollution Prevention (P2) Project, and the Tribal Affairs Project (TAP), components of FOSTTA, will be meeting October 17–18, 2005. The meeting is being held to provide participants an opportunity to have in-depth discussions on issues concerning the environment and human health. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

DATES: A plenary session is being planned for the participants from 8:30

a.m. to 9:45 a.m. on Monday, October 17. The three projects will meet on Monday, October 17, 2005, from 10 a.m. to 5 p.m., and on Tuesday, October 18, 2005, from 8:30 a.m. to noon. Requests to participate in the meeting, identified by docket identification (ID) number OPPT–2005–0046, must be received on or before October 13, 2005.

ADDRESSES: The meeting will be held at the Hilton Arlington Hotel, 950 N. Stafford Street, Arlington, VA.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address: *harrod.darlene@epa.gov*.

Margaret Sealey, Environmental Council of the States, 444 N. Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3662; fax number: (202) 624–3666; e-mail address: *msealey@sso.org*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in FOSTTA and in hearing more about the perspectives of the states and tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxic chemicals. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, federal, and local environmental and public health organizations.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2005–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The Toxic Substances Control Act (TSCA), 15 U.S.C. 2609 section 10(g), authorizes EPA and other federal agencies to establish and coordinate a system for exchange among federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the CIMP focuses on EPA's chemical program and works to develop a more coordinated effort involving federal, state, and tribal agencies. P2 promotes the prevention ethic across society, helping to integrate P2 into mainstream environmental activities at the federal level and among the states and tribes. TAP concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, tribal traditional/subsistence lifeways, and hazard communications and outreach. FOSTTA's vision is to focus on major policy-level issues of importance to states and tribes, recruit more senior state and tribal leaders, increase outreach to all 50 states and some 560 federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues.

In January 2002, the Environmental Council of the States (ECOS), in partnership with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS and NTEC facilitate ongoing efforts of the state and tribal leaders and OPPT to increase understanding and improve collaboration on toxic chemicals and pollution prevention issues, and to continue a dialogue on how Federal environmental programs can best be implemented among the states, tribes, and EPA.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2005–0046, must be received on or before October 13, 2005.

IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and pollution prevention issues. The states and the tribes

identified the following tentative agenda items:

1. National High Production Volume Chemical Data Users Conference.
2. Resource Conservation Challenge, including Toxic Chemicals of National Concern.
3. Area Source P2 Initiative.
4. Creating a Set of Guiding Principles for Incorporating P2 in Agency Media Programs.
5. Collaborative Activities--Tribal P2.
6. Navajo Healthy School Pilot Project.
7. Navajo Mercury Fish Tissue Sampling Project.

List of Subjects

Environmental protection, Pollution prevention, Chemical information and management.

Dated: September 22, 2005.

Barbara Cunningham,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–19606 Filed 9– 29–05; 8;45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7977–8]

Science Advisory Board Staff Office; Notification of an Upcoming Meeting of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to discuss a draft advisory and initial committee work on methods for valuing the protection of ecological systems and services.

DATES: October 25–26, 2005. A public meeting of the C–VPESS will be held from 9 a.m. to 5:30 p.m. (eastern time) on October 25, 2005 and from 9 a.m. to 3:30 p.m. (eastern time) on October 26, 2005.

ADDRESSES: The meeting will take place at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information regarding the SAB C–VPESS meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: 202–343–9981 or e-mail at: *nugent.angela@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meetings announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

Background on the SAB C–VPESS and its charge was provided in 68 Fed. Reg. 11082 (March 7, 2003). The purpose of the meeting is for the SAB C–VPESS to discuss a draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. The Committee will also discuss initial work on describing and assessing methods for such valuation, a topic that the Committee plans to address in a separate advisory report. These activities are related to the Committee's overall charge: to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Review Material for the Meetings

The Agenda and materials for this meeting will be available from the SAB Staff Office Web site at: *http://www.epa.gov/sab/agendas.htm*.

Procedures for Providing Public Comment

It is the policy of the EPA SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. Requests to provide oral comments at the October 25–26th meeting must be made in writing (by mail, e-mail, or fax) and received by Dr. Nugent no later than October 18, 2005.

Oral Comments: Each individual or group requesting an oral presentation at this meeting will be limited to a total time of ten minutes. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting.

Written Comments: Written comments should be received in the SAB Staff Office by October 18, 2005 so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting are asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations

For information on access or services for individuals with disabilities, please contact Dr. Nugent at the e-mail and phone number above. To request accommodation of a disability, please contact Dr. Nugent, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 26, 2005.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–19624 Filed 9–29–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, September 29, 2005, 10 a.m. meeting open to the public. This meeting was cancelled.

DATE & TIME: Thursday, October 6, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

(**NOTE**: The starting time for the open meeting on Thursday October 6, 2005 has been changed to 2 p.m.)

DATE & TIME: Thursday, October 6, 2005, at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Report of the Audit Division on the Dole North Carolina Victory Committee, Inc.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–19763 Filed 9–28–05; 3:08 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., October 24, 2005; 8:30 a.m.–4 p.m., October 25, 2005.

Place: Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include finalizing recommendations for isolation precautions to prevent transmission of infectious agents in healthcare settings, update on public reporting, and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Harriette Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, l600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

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: September 26, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 05–19559 Filed 9–29–05; 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 Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH) and Subcommittee for Dose Reconstruction and Site Profile Reviews.

Subcommittee Meeting Time and Date: 10 a.m.–3:30 p.m., October 17, 2005.

Committee Meeting Times and Dates: 8:30 a.m.–5 p.m., October 18, 2005. 8:30 a.m.–4:30 p.m., October 19, 2005.

Place: Knoxville Marriott Hotel, 500 Hill Avenue, SE., Knoxville, Tennessee, 37915. Telephone: (865) 637–1234.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 people.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on July 27, 2005.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for the Subcommittee Meeting includes Individual Dose Reconstruction Reviews; Site Profile Reviews, particularly Bethlehem Steel, Y–12, Savannah River Site and Rocky Flats; and a Review of Task 3 of the S. Cohen & Associates Contract (SC&A). The Board meeting's agenda includes Subcommittee Reports on the agenda items listed; SC&A Task 4; Site Profile Reviews; SEC Activities, specifically National Bureau of Standards Petition Evaluation and § 83.14 Petition Evaluation(s); Science Issues; Program Updates; and Conflict of Interest Discussions. The evening public comment periods are scheduled for October 17, 2005 from 4 p.m.–5 p.m. and October 18, 2005 from 7 p.m.–8 p.m.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: 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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 26, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–19563 Filed 9–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10148]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPAA Administrative Simplification Non-Privacy Enforcement; *Form Nos.:* CMS–10148 (OMB# 0938–0948); *Use:* The Health Insurance Portability and Accountability Act (HIPAA) became law in 1996 (Pub. L. 104–191). Subtitle F of Title II of HIPAA, entitled ''Administrative Simplification,'' (A.S.) requires the Secretary of Health and Human Services to adopt national standards for certain information-related activities of the health care industry. The HIPAA provisions, by statute, apply only to ''covered entities'' referred to in section 1320d–2(a)(1) of this title. Responsibility for administering and enforcing the HIPAA A.S. Transactions, Code Sets, Identifiers and Security Rules has been delegated to the Centers for Medicare & Medicaid Services; *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit, Individuals or Households; Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on October 31, 2005.

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 21, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–19244 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10157, CMS–R–0074, CMS–R–244 and CMS–10163]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* CMS Real-time Eligibility Agreement and Access Request; *Form Number:* CMS–10157 (OMB#: 0938–0960); *Use:* Federal law requires that CMS take precautions to minimize the security risk to Federal information systems. Accordingly, CMS is requiring that trading partners who wish to conduct the eligibility transaction on a real-time basis to access Medicare beneficiary information provide certain assurances as a condition of receiving access to the Medicare database for the purpose of conducting eligibility verification. Health care providers, clearinghouses, and health plans that wish access to the Medicare database are required to complete this form. The information will be used to assure that those entities that access the Medicare database are aware of applicable provisions and penalties. *Frequency:* Recordkeeping and Reporting—One time; *Affected Public:* Business or other for-profit, Not-for-profit institutions; Number of Respondents: 122,000; *Total Annual Responses:* 122,000; *Total Annual Hours:* 45,000.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System Reporting in Section 1137 of the Social Security Act and Supporting Regulations in 42 CFR 431.17, 431.306, 435.910, 435.920, 435.940–435.960; *Form Number:* CMS–R–0074 (OMB#: 0938–0467); *Use:* This information is used to verify the income and eligibility of Medicaid applicants and recipients as required by Section 1137 of the Social Security Act; *Affected Public:* Individuals or Households and State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 124,054.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid: Programs of All-Inclusive Care for the Elderly (PACE) contained in 42 CFR 460.12–460.210/Medicare and Medicaid: Programs of All-Inclusive Care for the Elderly (PACE; Program Revisions) contained in 42 CFR 460.10–460.210; *Form Number:* CMS–R–244 (OMB#: 0938–0790); *Use:* PACE is a pre-paid, capitated plan that provides comprehensive health care services to frail, older adults in the community, who are eligible for nursing home care according to State standards. The Balanced Budget Act (BBA) of 1997 authorized coverage of PACE under the Medicare program and as a State option under Medicaid. The Medicare, Medicaid, and SCHIP Benefits Improvement Act of 2000 (BIPA) amended section 1894 and 1943 of Social Security Act to provide authority for CMS to modify or waive PACE regulatory provisions. Organizations that seek participation under PACE must apply for approval and are evaluated in terms of specific criteria. The information collection requirement is necessary to ensure that only appropriate organizations are selected to become PACE organizations. CMS and the State Administering Agencies will

use the information to select PACE organizations and monitor their performance. *Frequency:* Recordkeeping, Reporting—Quarterly and Annually; *Affected Public:* Not-for-profit institutions, Federal Government and State, Local, or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 44,378.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* 1–800–MEDICARE Customer Experience Questionnaire; *Form Number:* CMS–10163 (OMB#: 0938–0963); *Use:* Section 923 (d) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 established 1–800 MEDICARE as the primary source of general Medicare information and assistance. As part of the Medicare Modernization Act (MMA), CMS must provide Part D eligibles and their representatives with the information they need to make informed decisions among the available choices for Part D coverage. Part D sponsors can start marketing their programs on October 1, 2005. The initial enrollment period for the general population will occur from November 15, 2005 to May 15, 2006. The information collected from this survey will allow CMS to monitor callers' satisfaction with various aspects of both the Interactive Voice Recognition (IVR) component and live Customer Service Representative (CSR) component of the 1–800 MEDICARE line. Timely feedback from customers on key satisfaction indicators will be used for continuous quality enhancement. *Frequency:* Reporting—Weekly, Quarterly and Monthly; *Affected Public:* Individuals and Households; *Number of Respondents:* 31,200; *Total Annual Responses:* 31,200; *Total Annual Hours:* 4940.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on November 29, 2005.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Bonnie L. Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 21, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–19245 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10146 and CMS–10147]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Form No.:* CMS–10146 (OMB# 0938–NEW); *Use:* Pursuant to 42 CFR 423.568(c), if a Part D plan denies drug coverage, in whole or in part, the Part D plan must give the enrollee written notice of the coverage determination; *Frequency:* Other: Distribution; *Affected Public:* Business or other for profit, Not-for-profit institutions; Individuals or Households and Federal Government; Number of Respondents: 450; *Total Annual Responses:* 1,056,000; *Total Annual Hours:* 528,000.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Prescription Drug Coverage and Your Rights; *Form No.:* CMS–10147 (OMB # 0938–NEW); *Use:* Pursuant to 42 CFR 423.562(a)(3), a Part D plan sponsor must arrange with its network pharmacies to post or distribute notices informing enrollees to contact their plan to request a coverage determination or an exception if the enrollee disagrees with the information provided by the pharmacy; *Frequency:* Other: Distribution; *Affected Public:* Business or other for profit, Not-for-profit institutions; Individuals or Households and Federal Government; *Number of Respondents:* 41,000; *Total Annual Responses:* 35,000,000; *Total Annual Hours:* 583,333.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on October 31, 2005.

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 23, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–19581 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1269–N6]

Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG): Announcement of a New Member

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

ACTION: Notice.

SUMMARY: This notice announces the selection of a new member of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG). The purpose of

the EMTALA TAG is to review regulations affecting hospital and physician responsibilities under EMTALA to individuals who come to a hospital seeking examination or treatment for medical conditions.

FOR FURTHER INFORMATION CONTACT: Beverly J. Parker, (410) 786–5320. George Morey, (410) 786–4653. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request or have a request made on their behalf for examination or treatment for a medical condition. EMTALA applies to all these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for emergency medical conditions, as well as necessary stabilizing treatment or appropriate transfer.

Regulations implementing the EMTALA legislation are set forth at 42 CFR 489.20(l), (m), (q) and (r)(1), (r)(2), (r)(3), and 489.24. Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requires that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG—

- Shall review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

The EMTALA TAG, as chartered under the legal authority of section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) for the selection of members and the conduct of all meetings.

In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the charter, general responsibilities, and structure of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG. In the August 27, 2004 **Federal Register** (69 FR 52699), we solicited nominations again for members in two categories (patient representatives and a State survey agency representative) for which no nominations were received in response to the May 28, 2004 **Federal Register** notice. In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the inaugural meeting of the EMTALA TAG and the membership selection. That meeting was held on March 30 and 31, 2005. On May 18, 2005 (70 FR 28541) we announced the second meeting of the EMTALA TAG with a purpose to hear public testimony and consider written responses from medical societies and other organizations on specific issues considered by the EMTALA TAG at its inaugural meeting. The second TAG meeting was held on June 15, 16, and 17, 2005.

On September 23, 2005, (70 FR 55903), we announced the third meeting of the EMTALA TAG, for the purpose of enabling the EMTALA TAG to hear additional testimony and further consider written responses from medical societies and other organizations on specific issues considered by the TAG at previous meetings. The third TAG meeting is scheduled for October 26, 27, and 28, 2005

II. Selection of New EMTALA TAG Member

In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the EMTALA TAG membership. One of those original members, a hospital representative, has been unable to complete his term of service. To enable the TAG to continue to function as required by section 945 of the MMA and to ensure that the concerns of hospitals are appropriately considered during TAG deliberations, another member has been selected to serve as a hospital representative. The new member is Rory Jaffe, M.D., M.B.A., of the University of California/Davis Medical Center. Dr. Jaffe was selected from the original list of nominees for the EMTALA TAG.

Authority: Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

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

Dated: September 23, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–19484 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3144–NC; 0938–ZA49]

Medicare Program; Calendar Year 2005 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

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

ACTION: Notice with public comment period.

SUMMARY: In this notice with public comment period, we announce the requests we have received from entities seeking review of the appropriateness of the Medicare payment amount for new technology lenses furnished by ambulatory surgical centers (ASCs). Interested parties submitted these requests for review in response to our May 27, 2005 **Federal Register** notice entitled ''Medicare Program; Calendar Year 2005 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs).'' We received one timely application for review by the June 27, 2005 due date listed in that **Federal Register** notice. In this notice with comment period, we summarize the timely application received and solicit public comments on the one intraocular lens (IOL) under review.

DATES: To be assured consideration, comments regarding the intraocular lenses specified in this notice must be received at one of the addresses provided below, no later than 5 p.m. on October 31, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3144–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this notice to *http://*

www.cms.hhs.gov/regulations/ecomments (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attn: CAPT Michael Lyman, CMS–3144–NC, Mail Stop C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3144–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or

7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michael Lyman, (410) 786–6938.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b)(1) of SSAA 1994 required us to develop and implement a process under which interested parties may request, with respect to a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for intraocular lenses (IOLs) furnished by ASCs under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (64 FR 32198), which added subpart F to 42 CFR part 416. The June 16, 1999 final rule established a process for adjusting payment amounts for NTIOLs furnished by ASCs (§ 416.185); defined the terms relevant to the process (§ 416.180); and established an initial flat rate payment adjustment of $50 for IOLs that we determined were NTIOLs (§ 416.185(f)(1)). As provided in section 416.200, the payment adjustment applies for a 5-year period that begins when we recognize a payment adjustment for the first NTIOL. Any subsequent IOLs with the same characteristics as the first IOL recognized for a payment adjustment will receive the same payment adjustment for the remainder of the 5-year period established by the first recognized NTIOL (§ 416.200(b)). In accordance with the payment review process specified in § 416.185(f)(2), after July 16, 2002, we have authority to modify the $50 adjustment amount through proposed and final rulemaking in connection with ambulatory surgical center services. To date however, we have made no changes to the payment amount and have opted not to change the adjustment for calendar year 2005 (CY 2005).

We will classify an IOL as an NTIOL if the lens meets the definition of a ''new technology IOL'' in 42 CFR 416.180, which incorporates section 141(b)(2) of SSAA 1994. Under that section, a ''new technology IOL'' is defined as ''an IOL that CMS determines has been approved by the FDA for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs with regard to reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.''

The process we use for evaluating requests for NTIOL designation and reviewing the appropriateness of the payment amount for an NTIOL furnished by ASCs is described in our regulations at 42 CFR part 416, subpart F and in the February 27, 2004 **Federal Register** notice. This process includes: (1) Publishing a public notice in the **Federal Register** identifying requirements and the deadline for submitting a request; (2) Processing requests to review the appropriateness of the payment amount for an IOL; (3) Compiling a list of the requests we receive that identify the IOL manufacturer, IOL model number under review, name of the requester, and a summary of the request for review of the appropriateness of the IOL payment amount; (4) Publishing an annual public notice in the **Federal Register** that lists the requests and provides for a 30-day public comment period; (5) Reviewing the information submitted with the applicant's request for review, and requesting confirmation from the FDA about labeling applications that have been approved on the IOL model under review. We also request the FDA's recommendations as to whether or not the IOL model submitted represents a new class of technology that sets it apart from other IOLs. Using a baseline of the date of the last determination of a new class of IOLs, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses providing specific clinical advantages and proof of superiority over existing IOLs as described in the preceding paragraph; (6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information; (7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class; (8) Publishing a notice in the **Federal Register** announcing the IOLs that we have determined are ''new technology'' IOLs. These NTIOLs qualify for a $50 payment adjustment or the amount announced through proposed and final rules in connection with ASC services; and (9) Adjusting payments effective 30 days after the publication of the final notice announcing our determinations described in paragraph (8) of this section.

II. Applications for New Technology Intraocular Lens (NTIOLs) for Calendar Year 2005

On May 27, 2005 we published the first notice in the **Federal Register** entitled ''Medicare Program; Calendar Year 2005 Review of the

Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)'' to solicit requests for review of applications for a payment adjustment with respect to a class of NTIOLs.

We received one request for the $50 payment adjustment by the June 27, 2005 due date specified in the notice:

Manufacturer and Requestor: Advanced Medical Optics (AMO); 1700 E. St. Andrew Place; P.O. Box 25162; Santa Ana, California 92799–5162.

Model Numbers: Tecnis® Models Z9000, Z9001 and Z9003.

Reason for Requesting Review: The requestor states that the Tecnis® IOLs were designed to improve contrast sensitivity, reduce ocular spherical aberration, and improve the functional vision of cataract surgery patients with implanted IOLs.

Tecnis® Models Z9000 and Z9001 were previously submitted for NTIOL designation in calendar year 2004 and were determined by CMS to be ineligible for NTIOL designation due to a lack of evidence that the design improvements provided a clinical benefit to patients. AMO has resubmitted its NTIOL request and provided additional information on the clinical relevance of increased contrast sensitivity. AMO provided FDA-approved product labeling claiming improved functional vision compared with another IOL. AMO also provided additional studies, a meta-analysis, and justification of the choice of comparator lens that were not included in the previous 2004 NTIOL application.

Submitting Comments: We welcome comments from the public on the appropriateness of the Medicare payment amount for the Tecnis' IOLs listed in this notice with public comment period. You can assist us by referencing the file code CMS–3144–NC.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday from 8:30 a.m. to 4 p.m. Please contact us by phone at (800) 743–3951 to schedule an appointment to view public comments associated with this notice.

Copies: You can view and photocopy this **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/fr/index.html.*

Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

III. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866, (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this notice is not a major rule because it merely summarizes the timely applications received and solicits comments on IOLs under review.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $8.5 million or less in any 1 year. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a regulation may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1832(a)(2)(F)(i) (42 U.S.C. 1395k(a)(2)(F)(i)) and 1833(i)(2)(A)(iii) (42 U.S.C. 1395l(i)(2)(A)(iii)) of the Social Security Act, and Section 141(b) of the Social Security Act Amendments of 1994, Pub. L. 103–432).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

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

Dated: September 23, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–19483 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1307–CN]

RIN 0938–ZA74

Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2006; Correction Notice

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

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the general notice with comment period published in the **Federal Register** on September 23, 2005 entitled ''Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2006.''

EFFECTIVE DATE: This correction is effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, (410) 786–5633.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–18923 of September 23, 2005 (70 FR 55887), there were technical errors that are identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. 05–18923 of September 23, 2005 (70 FR 55887), make the following corrections:

1. On page 55887, in the third column, second paragraph, lines 2 and 3, the date ''October 24, 2005'' is corrected to read ''October 1, 2005.''

2. On page 55888, in the first column, first paragraph, lines 2 through 4, the phrase ''beginning on the first day of the first month following publication of this notice in the **Federal Register**'' is corrected to read, ''October 31, 2005'.

3. On page 55888, in the first column, fourth paragraph, lines 5 and 6, the Web site address ''or to *http://www.regulations.gov*'' is deleted.

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

Dated: September 26, 2005.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–19611 Filed 9–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0385]

Draft Guidance for Industry on Using Electronic Means to Distribute Certain Product Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Guidance for Industry: Using Electronic Means to Distribute Certain Product Information,'' dated September 2005. The draft guidance explains that persons can distribute certain product information, such as for recalls and drug safety, by electronic means. We encourage the use of electronic communications for conveying all such important product safety information. We are making clear in this draft guidance that manufacturers may disseminate communications by e-mail or other electronic methods.

DATES: Submit written or electronic comments on the draft guidance by November 29, 2005, to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 301–827–3360. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

The timely dissemination of communications about recalls of FDA regulated products, important drug safety information, and other important product safety information is essential for the protection of the public health. We have encouraged manufacturers to provide such information in a timely manner to distributors, doctors, and others. Over the years, we have worked with manufacturers to promote the use of electronic methods of communication and encourage the use of innovative technologies to disseminate safety information, particularly those that provide a public health benefit. We are making clear in the draft guidance that manufacturers may disseminate the communications discussed in §§ 7.49 and 200.5 (21 CFR 7.49 and 200.5) by e-mail or other electronic methods. The draft guidance also applies to those instances, not addressed in any regulation, where we recommend that manufacturers and distributors voluntarily convey certain safety information about their products to members of the public.

The use of e-mail and other electronic communications has dramatically changed how we and the public convey information. Electronic communications have a number of advantages over paper-based communications. They can significantly shorten the time between an event and the public's knowledge of the event. When the event involves product safety, it is even more important that accurate safety information be transmitted rapidly. E-mail and other electronic communications are generally considered more efficient and more timely than regular or traditional mail. These communications involve considerably less cost to the sender than older, more traditional delivery services. Verification of receipt or delivery is less expensive and can be automatically accomplished. Any necessary followup (such as when receipt of the e-mail is not acknowledged) also can be accomplished electronically. If receipt is never acknowledged, the sender can resort to more traditional methods of notification.

We interpret the provisions of §§ 7.49 and 200.5 to allow the use of e-mail and other electronic communication methods, such as fax or text messaging, to accomplish any recall notification or distribution of important safety information. Section 7.49(b) provides

that ''A recall communication can be accomplished by telegrams, mailgrams, or first class letters* * *.'' Given the use of the term ''can,'' we read the three examples as being illustrative rather than the sole means of accomplishing recall communications. Electronic notification is a viable alternative to more traditional methods.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on using electronic means to distribute certain product information. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/oc/guidance/electronic.html* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: September 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–19731 Filed 9–28–05; 1:53 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would be constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Sickle Cell Disease Clinical Research Network.

Date: October 31–November 1, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William J. Johnson, PhD, Review Branch, Division of Extramural Affairs, NIH/NHLBI, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301–435–0317, *johnsonw@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19537 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could discuss confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Patient-Oriented K Applications.

Date: October 27–28, 2005.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Roy L White, PhD, Scientific Review Administrator, Division of Extramural Affairs, Review Branch, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Rm. 7202, Bethesda, MD 20892–7924, 301/435–0310, *whiterl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19538 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 18–19, 2005.

Open: October 18, 2005, 2 p.m. to 2:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: October 19, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Disease and Nutrition C Subcommittee.

Date: October 27–28, 2005.

Open: October 27, 2005, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Renaissance Hotel, 999 Ninth Street Northwest, Washington, DC 20001.

Closed: October 27, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Hotel, 999 Ninth Street Northwest, Washington, DC 20001.

Closed: October 28, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Hotel, 999 Ninth Street Northwest, Washington, DC 20001.

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: November 3–4, 2005.

Open: November 3, 2005, 6 p.m. to 6:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: November 3, 2005, 6:30 p.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: November 4, 2005, 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93l.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 21, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19540 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, November 2, 2005, 8 a.m. to November 2, 2005, 5 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on September 16, 2005, 70 FR 54759–54760.

The meeting will be held at the Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817, rather than at the Residence Inn Bethesda, as previously reported. The meeting is closed to the public.

Dated: September 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19541 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Rodent Tissue Bank.

Date: October 13, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19542 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: October 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michelle L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy

Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Nutrition Research Unit Core Centers.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Dialysis Access Consortium Clinical Trails.

Date: October 25, 2005.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 705, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies in Obesity.

Date: November 4, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloom@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19543 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: October 24–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yan Z. Wang, PhD, MD, Scientific Review Administrator, National Institutes of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 22, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19544 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute On Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 25–26, 2005.

Closed: October 25, 2005, 8 a.m. to 9 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: October 25, 2005, 9 a.m. to 11:45 a.m.

Agenda: Committee Discussion.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 25, 2005 11:45 a.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: October 25, 2005, 12:45 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 25, 2005 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 26, 2005 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: October 26, 2005, 8:30 a.m. to 12:15 p.m.

Agenda: Committee Discussion.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 26, 2005 12:15 p.m. to 1:30 p.m.

Agenda: Committee Discussion.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 23, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19545 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cellular Signaling and Dynamics.

Date: October 13–14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, CMIR Member Conflict.

Date: October 13, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–P(02)M: Alpha 1-Adrenoceptors in Prostrate Pathology.

Date: October 17, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: October 19–20, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Nuclear Dynamics and Transport.

Date: October 19–20, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Charles R. Dearolf, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *dearolfc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Emotions, Stress and Health.

Date: October 20, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EMNR E(10) B-Endocrinology, Metabolism, Nutrition, and Reproductive Sciences Small Business Innovation Review.

Date: October 20–21, 2005.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: October 21, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 15th & Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: October 21, 2005.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radioimmunotherapy.

Date: October 21, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: October 23–25, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Cell Biology Study Section.

Date: October 23–25, 2005

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 21, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–19539 Filed 9–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22266]

Great Lakes Pilotage Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Great Lakes Pilotage Advisory Committee (GLPAC). GLPAC provides advice and makes recommendations to the Secretary on a wide range of issues related to pilotage on the Great Lakes, including the rules and regulations that govern the registration, operating requirements, and training policies for all U.S. registered pilots. The Committee also advises on matters related to ratemaking to determine the appropriate charge for pilot services on the Great Lakes.

DATES: Completed application forms should reach us on or before November 31, 2005.

ADDRESSES: You may request an application form by writing to GLPAC Application; Commandant (G–MWP–1), Room 1406; U.S. Coast Guard; 2100 Second Street, SW., Washington, DC 20593–0001; by calling (202) 267–2384; or by faxing (202) 267–4700. Send your original completed and signed application in written form to the above street address. This notice and the application are available on the Internet at *http://dms.dot.gov* and the application form is also available at *http://www.uscg.mil/hq/g-m/advisory/index.htm*.

FOR FURTHER INFORMATION CONTACT: Mr. John Bobb; Executive Secretary of GLPAC, telephone (202) 267–2384, fax (202) 267–4700, or *mailto:jbobb@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: The Great Lakes Pilotage Advisory Committee (GLPAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary on a wide range of issues related to pilotage on the Great Lakes. GLPAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its working groups may meet to consider specific problems as required.

Applications are being considered for three positions whose terms have expired. Applications will be considered from persons representing three industry groups; Great Lakes vessel operators that contract for Great Lakes pilotage services, Great Lakes ports, and Great Lakes shippers. One appointment will be made to represent the Great Lakes vessel operators, one to represent the Great Lakes ports, and one to represent Great Lakes shippers.

To be eligible, applicants should have particular expertise, knowledge, and experience regarding the regulations and policies on the pilotage of vessels on the Great Lakes, and at least 5 years practical experience in maritime operations. Each member serves for a term of 3 years and may be reappointed for one additional term. All members serve at their own expense but receive reimbursement for travel and per diem expenses from the Federal Government.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: September 6, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–19587 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Request OMB Emergency Approval: Screening Requirements of Carriers; 1651–0122, File No. OMB–16.

The Department of Homeland Security (DHS) and the U.S. Customs and Border Protection (CBP) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, immediate OMB approval has been requested. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503; (202) 395–5806.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the DHS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until November 29, 2005. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, (202) 272–8354, U.S. Citizenship and Immigration Services, Director, Regulatory Mangement Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Screening Requirements for Carriers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* File No. OMB–16; 1651–0122, U.S. Customs and Border Protection (CBP).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The evidence collected is used by CBP to determine whether sufficient steps were taken by a carrier demonstrating improvement in the screening of its passengers in order for the carrier to be eligible for automatic fines mitigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 65 responses at 100 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, (202) 272–8354, U.S. Citizenship and Immigration Services, Director, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: September 27, 2005.

Stephen R. Tarragon,

Acting Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–19592 Filed 9–29–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the U.S. Fire Administration's National Fire Academy Long-term Course Evaluation Forms.

SUPPLEMENTARY INFORMATION: The data collection from the long-term evaluation forms—one for students and one for the student's supervisor—will obtain course specific feedback regarding the impact of course content on job performance. This data is needed to improve instructional delivery and curriculum design. Demographic data are needed to identify differentials in course impact. The information collection also supports the Government Performance and Results Act and the Agency's Programming, Planning and Budgeting reporting requirements. In an effort to help minimize the burden of the collection of information on those who are to respond, the paper-based forms will be converted to an automated/electronic format that will allow for the electronic submission of responses. As such the respondent universe will increase due to the on-line availability of the forms and linkage to the current end-of-course evaluation form. By using an automated process, it is expected that the estimated cost associated with the processing of the forms will decrease.

Collection of Information

Title: National Fire Academy Long-term Evaluation Forms (Students and Supervisors).

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0039.

Form Numbers: FF 95–58 and FF 95–59.

Abstract: The National Fire Academy's long-term evaluation forms—one for students and one for the student's supervisor—will obtain course specific feedback regarding impact of course content on job performance. The information is needed to improve instruction and content. Demographic data are needed to identify differentials in course impact.

Affected Public: Individuals participating in NFA resident training courses; State, local or tribal government.

Estimated Total Annual Burden Hours: 3,300.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A×B×C)
FF 95–58 (Student)	5,000	1	.33	1,650
FF 95–59 (Supervisor)	5,000	1	.17	1,650
Total	10,000	1	.50	3,300

Frequency of Response: Once at the conclusion of National Fire Academy resident training courses.

Estimated Cost: $75,000.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall

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 submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to: Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Gladhill, Program Analyst, National Fire Academy, (301) 447–1239 for additional information. You may contact the Records Management Section at (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: September 26, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–19579 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This submission adds complete details on a mail survey to be administered in the Newport, IN site.

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: OMB 1660–0057.

Abstract: Consistent with performance measurement requirements set forth by the Government Performance Results Act, the Chemical Stockpile Preparedness Program (CSEPP) will continue collecting data from state, local and tribal governments, individuals, and businesses residing in immediate or surrounding areas of eight chemical stockpile sites. The study will: assess outreach program effectiveness, measure/monitor customer satisfaction, and identify weaknesses and strengths of individual sites.

Affected Public: Individuals (residents), Businesses, State, local, and Tribal Governments.

Number of Respondents: 7,757 residents, businesses and government officials.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,910.

Frequency of Response: Once annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to: Desk Officer for the Federal Emergency Management Agency, Emergency Preparedness & Response Directorate, U.S. Department of Homeland Security, facsimile number (202) 395–7285 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to the Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: September 21, 2005.

Darcy Bingham,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 05–19639 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Write-Your-Own (WYO) Program.

OMB Number: 1660–0020.

Abstract: Under the Write Your Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is guarantor of flood insurance coverage for WYO companies, issued under the WYO arrangements. In order to maintain adequate financial control over Federal funds, the NFIP requires that WYO companies submit a monthly financial report. The NFIP examines the data to ensure that policyholders funds are accounted for and appropriately expended.

Affected Public: Business or Other For-Profit.

Number of Respondents: 97.

Estimated Time per Respondent: .59 hours (35 minutes).

Estimated Total Annual Burden Hours: 687.

Frequency of Response: 12.

Comments: Interested persons are invited to submit written comments on

the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: September 23, 2005.

Darcey Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–19640 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1605–DR]

Alabama; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1605–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Vice Admiral Thad Allen, of the United States Coast Guard is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael Bolch as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19634 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3256–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3256–EM), dated September 19, 2005, and related determinations.

DATES: Effective September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Maine, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Maine.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth L. Horak, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

All 16 counties in the State of Maine for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19627 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1591–DR]

Maine; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1591–DR), dated June 29, 2005, and related determinations.

EFFECTIVE DATE: September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2005: York County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19631 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Vice Admiral Thad Allen, of the United States Coast Guard is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of William L. Carwile, III as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19632 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

Attala, Choctaw, Warren, and Yazoo Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

Bolivar, Calhoun, Carroll, Chickasaw, Clay, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Monroe, Montgomery, Panola, Pontotoc, Prentiss, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Webster, and Yalobusha Counties for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19633 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3258–EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3258–EM), dated September 19, 2005, and related determinations.

DATES: Effective September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of New Hampshire, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of New Hampshire.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth L. Horak, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

All 10 counties in the State of New Hampshire for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19629 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3257–EM]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3257–EM), dated September 19, 2005, and related determinations.

DATES: Effective September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of New Jersey, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of New Jersey.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Kathryn G. Rise Humphrey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared emergency:

All 21 counties in the State of New Jersey for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations;

97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19628 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3254–EM]

North Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3254–EM), dated September 14, 2005, and related determinations.

EFFECTIVE DATE: September 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 17, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19636 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3255–EM]

Rhode Island; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA–3255–EM), dated September 19, 2005, and related determinations.

EFFECTIVE DATE: September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, and Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Rhode Island, resulting from the influx of evacuees from states impacted by Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Rhode Island.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives and protect public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program, at 100 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth L. Horak, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared emergency:

All five counties in the State of Rhode Island for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19635 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3261–EM]

Texas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3261–EM), dated September 21, 2005, and related determinations.

EFFECTIVE DATE: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

September 21, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Texas, resulting from Hurricane Rita beginning on September 20, 2005, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Texas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect public health and safety, and property or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures, (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to provide assistance for emergency protective measures, including direct Federal assistance at 100 percent Federal funding of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

All 254 counties in the State of Texas for Public Assistance Category B (emergency protective measures), including direct Federal assistance, at 75 percent Federal funding of the total eligible costs.

For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent Federal funding of the total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19630 Filed 9–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of Existing Collection; Comment Request.

ACTION: Request OMB 60-Day Emergency Approval: Application for Authorization to Issue Certification for Health Care Workers and Related Requirements; Form I–905.

The Department of Homeland Security (DHS) and the U.S. Citizenship and Immigration Services (CIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information under OMB 1615–0062, Certificates for Health Care Workers. Therefore, immediate OMB approval has been requested. If granted, the emergency approval is only valid for 90 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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.

2. *Title of the Form/Collection:* Application for Authorization to Issue Certification for Health Care Workers and Related Requirements.

3. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–905. Business and Trade Services, Program and Regulations Development, U.S. Citizenship and Immigration Services.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected on this form is used by CIS to determine eligibility of an organization to issue certificates to foreign health care workers. It also provides the requirements for the data that shall be displayed on all health care certificates that will be used by a benefit granting agency. The information must be contained on each certificate issued by a certifying body in order for the certificate to be valid. This data requirement was established under control number 1615–0062. That information collection was published as an Information Collection Request (no agency form) at 68 FR 43901 (Final rule: Certificates for Certain Health Care Workers, July 25, 2003).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: 21,010 responses at 7.6 hours per response. This number includes the anticipated amount of certificates that will be issued by a benefit granting agency as the information collection now includes the requirements that must be met in order for a certificate to be valid.

6. *An estimate of the total public burden (in hours) associated with the collection:* 37,280 annual burden hours. This number is increased as explained in item 5 above.

7. *Other Information:* This submission combines the information collection previously approved under OMB control number 1615–0062 and Form I–905 (OMB control number 1615–0086).

If you have additional comments, suggestions, or need a copy of the revised information collection instrument, please contact Richard A. Sloan, Director, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529, Attn: Bahar Sadjadi at: (202) 272–8354.

Dated: September 28, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–19720 Filed 9–28–05; 1:17 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–47]

Notice of Submission of Proposed Information Collection to OMB; Ginnie Mae Mortgage-Backed Securities Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collected is needed by Ginnie Mae for participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

DATES: *Comments Due Date:* October 31, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2503–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L__Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Programs.

OMB Approval Number: 2503–0033.

Form Numbers: HUD–11701, 11702, 11700, 11704, 11707, 11709, 11709A, 11715, 11720, 11705, 11706, 11711A, 11711B, 11732, 11708, 11710A, 11710E, 1710B, 1710C, 11710D, 11714, 11714SN, 11748A, 11748C, 11714, 11717–II, 11747, 11747–II, 11712, 11712–II, 1734, 11728, 11728–II, 1724, 1731, 11772–II, App. VI–1, App. VI–2, VI–8, App. VI–9, App. VII–1, App. VIII–1, App. VIII–2, App. VIII–4, App. VIII–3, App. XI–2, App. XI–6, App. XI–8.

Description of the Need for the Information and its Proposed Use: The information collected is needed by Ginnie Mae for the participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with Established rules and regulations.

Frequency of Submission: On Occasion, Monthly, Quarterly, and Annually.

	Number of *respondents*	Annual *responses*	×	Hours per *response*	=	*Burden hours*
Reporting Burden	271	45,639	....	0.005	....	57,863

Total Estimated Burden Hours: 57,863.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 23, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–19535 Filed 9–29–05; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–31]

Notice of Proposed Information Collection: Comment Request; Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 29, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government Sponsored Enterprises Oversight, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2224 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

OMB Control Number, if applicable: 2502–0514.

Description of the need for the information and proposed use: HUD collects loan-level data on mortgages that Fannie Mae and Freddie Mac (collectively referred to as the ''GSEs'') purchase and guarantee in order to measure and monitor compliance with statutorily mandated annual housing goals and to ensure the integrity of the data provided by the GSEs to HUD. HUD also collects information on the programs, products, and business activities of the GSEs to monitor the extent to which these activities support the GSEs' public purposes and are consistent with their Charter acts.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 2; the total annual number of responses is about 76; the frequency of the responses are on occasion, quarterly, semi-annually, and annually; and the total annual hours of responses are estimated at 9,446.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 23, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E5–5322 Filed 9–29–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–48]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Capital Fund Financing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is required to ensure PHAs appropriately disburse and utilize the funds provided for modernization and new construction of Public Housing including, Mixed Finance and Capital Fund Financing. This is a consolidation of a number of information collections.

DATES: *Comments Due Date:* October 31, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0157) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of

information to: (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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Capital Fund Financing.

OMB Approval Number: 2577–0157.

Form Numbers: HUD–5087, HUD–50071, HUD–51915, HUD–51915–A, HUD–5378, HUD–51971–I–II, HUD–52482, HUD–52483–A, HUD–52485, HUD–52651–A, HUD–52427, HUD–52484, HUD–52396, HUD–5372, HUD–51000, HUD–51001, HUD–51002, HUD–51003, HUD–51004, HUD–5460, HUD–52860, HUD–52850, HUD–5370, HUD–5370–C, HUD–52832, HUD–52833, HUD–52834, HUD–52835, HUD–52836, HUD–52837, HUD–52842, HUD–53001, HUD–53015, HUD–52845, HUD–52846, HUD–52847, HUD–52848, HUD–52849

Description of the Need for the Information and Its Proposed Use:

The information is required to ensure PHAs appropriately disburse and utilize the funds provided for modernization and new construction of Public Housing including, Mixed Finance and Capital Fund Financing. This is a consolidation of a number of related information collections.

Frequency of Submission: On occasion, monthly, quarterly, and annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,140	97,262		3.6		347,886

Total Estimated Burden Hours: 57,863.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 23, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–5323 Filed 9–29–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4917–N–06]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Office of Evaluation, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410, telephone (202) 755–7500, extension 7546. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to sections 204(c) and 207(j) of the National Housing Act (12 U.S.C. 1710(c) and 1713(j)), and in accordance with HUD's regulations at 24 CFR 203.409 and 207.259(e)(3), the Assistant Secretary for Housing-Federal Housing Commissioner, with the approval of the Secretary of HUD and the Secretary of Treasury, announces the call of all FHA debentures, with a coupon rate of 5.75 percent or above, except for those debentures subject to ''debenture lock agreements,'' that have been registered on the books of the Bureau of Public Debt, Department of the Treasury, and are, therefore, ''outstanding'' as of September 30, 2005. The date of the call is January 1, 2006.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Department of the Treasury on or after December 12, 2005. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 2006, will be made automatically to the registered holder.

Dated: September 23, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. E5–5321 Filed 9–29–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 22, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–19298 Filed 9–29–05; 8:45 am]

BILLING CODE 4210–29–M

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting; Agenda for board of Directors' Meeting

October 14, 2005, 9:30 a.m.–3 p.m.

The meeting will be held at the Inter-American Foundation, 901 N. Stuart Street, 10th Floor, Arlington, Virginia 22203.

The meeting will be open except for the portion specified as a closed session as provided in 22 CFR Part 1004.4(f).

9:30 a.m.—Call to Order. Approval of the Minutes of the November 30, 2004 meeting
10 a.m.—President's Report
11 a.m.—Discussion
12 p.m.—Lunch
12:30 p.m.—Discussion and other business. (Portions of this discussion will be closed to discuss personnel issues, as provided in 22 CFR Part 1004.4(f).)
3 p.m.—Adjournment

Jocelyn Nieva,

Acting General Counsel.

[FR Doc. 05–19702 Filed 9–28–05; 11:40 am]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 17, 2005.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 17, 2005 at 7 p.m. at Alternatives Unlimited, 54 Douglas Road, Whitinsville, MA 01588 for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Larry Gall, Interim Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Larry Gall, Interim Executive Director of the Commission at the aforementioned address.

Larry Gall,

Interim Executive Director, BRVNHCC.

[FR Doc. 05–19562 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Suspension of Trade in Threatened Beluga Sturgeon (*Huso huso*) From the Caspian Sea Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), give notice that we are suspending import of and foreign commerce in beluga sturgeon (*Huso huso*) caviar and meat originating in the Caspian Sea littoral states of Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, and Turkmenistan effective immediately. This suspension includes shipments that have been exported directly from these countries, re-exported through an intermediary country, or transported as personal or household effects, and it prohibits foreign commerce in the course of a commercial activity. We are taking this action under the special rule that was promulgated to control the trade of threatened beluga sturgeon (*Huso huso*) (70 FR 10493; March 4, 2005). Interstate commerce in beluga sturgeon caviar or meat from the Caspian Sea basin that was legally imported into the United States before the trade suspension is not prohibited.

DATES: This notice is effective September 30, 2005.

ADDRESSES: Caspian Sea littoral states wishing to provide information that may allow us to lift this trade suspension may submit it by any one of several methods:

1. You may submit written information to Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

2. You may hand-deliver written information to the Division of Scientific Authority, at the above address, or fax your comments to (703) 358–2276.

3. You may send information by electronic mail (e-mail) to *ScientificAuthority@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For further information pertaining to compliance with the special rule, contact Robert R. Gabel, Chief, Division of Scientific Authority, at the address above; telephone, (703) 358–1708; fax, (703) 358–2276. For further information on application procedures and requirements for threatened species permits, contact the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203; telephone, (703) 358–2104; fax, (703) 358–2281.

SUPPLEMENTARY INFORMATION: On April 21, 2004, we listed beluga sturgeon as threatened (69 FR 21425) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). We subsequently published a special rule concerning beluga sturgeon (70 FR 10493; March 4, 2005) under section 4(d) of the Act. The special rule, located at 50 CFR 17.44(y) of our regulations, promotes the conservation of the species by allowing the import, export or re-export, and interstate and foreign commerce of beluga sturgeon caviar and meat, without threatened species permits otherwise required under 50 CFR 17.32, from littoral states in the Caspian and Black Sea basins that demonstrate progress on measures to protect and recover the species. The special rule requires countries wishing to export beluga sturgeon caviar or meat to the United States under this exemption to provide, by September 6, 2005, copies of basin-wide cooperative management plans for beluga sturgeon agreed to by all littoral states in the Black Sea or Caspian Sea basin along with copies of national laws and regulations implementing the management plans.

Import of and foreign commerce in Caspian Sea beluga sturgeon suspended. We have not received a management plan or copies of national

laws and regulations from any of the littoral states in the Caspian Sea basin. Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, and Turkmenistan have therefore failed to meet the conditions of the special rule. As a result, beluga sturgeon caviar (including products containing caviar, such as cosmetics) and meat from these countries are no longer eligible for the exemption from threatened species permits provided by the special rule. Therefore, you may not import or re-export, sell or offer for sale in foreign commerce, or deliver, receive, carry, transport, or ship in foreign commerce in the course of a commercial activity any beluga sturgeon caviar or meat from these Caspian Sea countries on or after the effective date of this **Federal Register** notice (see **DATES** section) without a threatened species permit. Beluga sturgeon caviar or meat originating in these countries that has been shipped on or after the effective date of this **Federal Register** notice (see **DATES** section) without a threatened species permit issued under 50 CFR 17.32 will be refused clearance upon arrival in the United States, including shipments that have been exported directly from the countries listed above in this paragraph, re-exported through an intermediary country, or transported as personal or household effects.

Threatened species permits may only be issued for beluga sturgeon from the Caspian Sea basin if we determine that the proposed import, re-export, or interstate or foreign commerce would meet the regulatory requirements in 50 CFR 17.32. Applicants must demonstrate that their proposed activities would provide for the conservation of the species.

Beluga sturgeon products legally imported before the trade suspension. Beluga sturgeon caviar or meat from Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, or Turkmenistan that was legally imported into the United States prior to the trade suspension will continue to be authorized for interstate commerce under the special rule without a threatened species permit. Due to the perishable nature of sturgeon caviar and meat, the exemption for interstate commerce in beluga sturgeon caviar and meat legally imported prior to the trade suspension will continue for a period of no more than 18 months after the date of issuance of the original Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permit, in accordance with the CITES resolution on the ''Conservation of and trade in sturgeons and paddlefish'' (Resolution Conf. 12.7 (Rev. CoP13)). Individuals should maintain accurate records to be able to demonstrate that their beluga sturgeon caviar and meat were legally imported prior to the trade suspension.

Conditions for lifting of the trade suspension. Under the special rule, if the littoral states fail to submit a basin-wide management plan for beluga sturgeon, or if we are unable to confirm that all littoral states in the basin are signatories to the plan, we will immediately suspend trade with all littoral states in the basin until we are satisfied that such a management plan exists. Likewise, under the special rule, if the littoral states fail to submit copies of national laws and regulations that implement the basin-wide management plan, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect. For us to consider lifting the trade suspension, the littoral states of the Caspian Sea basin must submit a basin-wide management plan for beluga sturgeon, agreed to by all littoral states in the basin. In addition, each littoral state wishing to export beluga sturgeon caviar and meat to the United States under the exemption provided by the special rule must submit copies of their national laws and regulations that implement the basin-wide plan. Information on how to submit such materials is located in the **ADDRESSES** section.

Black Sea basin. We are in the process of reviewing information received from littoral states in the Black Sea basin. In accordance with the special rule, trade may continue from the littoral states of the Black Sea that have declared export quotas for beluga sturgeon (*i.e.*, Bulgaria, Romania, and Serbia and Montenegro), as required under CITES, while we complete our review.

Aquaculture facilities. The special rule allows aquaculture facilities outside the Caspian and Black Sea basins to obtain an exemption from threatened species permits otherwise required under 50 CFR 17.32 if they meet certain conditions. We have not yet received any requests for such an exemption. Under the special rule, there is no deadline for receipt of applications from aquaculture facilities seeking an exemption.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 22, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–19580 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–05–1610–DP–086L]

Notice of Availability of the Ring of Fire Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Anchorage Field Office, Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Bureau of Land Management (BLM) management policies, the Ring of Fire Draft Resource Management Plan and Environmental Impact Statement (RMP/EIS) has been prepared for public lands and resources administered by the Bureau of Land Management's Anchorage Field Office The Ring of Fire Draft RMP/EIS will provide the management guidance for resource decisions on 1.3 million acres of fragmented BLM-administered lands spread from below the Dixon Entrance in southeast Alaska to Attu Island at the end of the Aleutian Chain. The Ring of Fire RMP/EIS will revise management direction for approximately 10 percent of the lands covered by the Southcentral Management Framework Plan of 1980, and will provide management for approximately 90 percent of the lands not previously addressed in a management plan.

ADDRESSES: Written comments should be mailed or hand delivered to the BLM Anchorage Field Office, Ring of Fire RMP/EIS, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and can be resolved in this planning process. Comments can also be sent via e-mail to *akrofrmp@blm.gov.* To request a CD or hard copy of the document or to be included on the mailing list, contact Amy Lewis via e-mail at *Amy_Lewis@urscorp.com,* or via phone at (907) 261–9730. Comments, including names and street addresses of respondents, may be published as part of the Final EIS and Proposed RMP. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning

of your written comments. Such requests will be honored to the extent allowed by the law. All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety.

DATES: Comments on the Ring of Fire Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. Comments on the Ring of Fire Draft RMP/EIS must be received on or before the end of the comment period at the physical address or e-mail address listed above. Specific dates and locations of public meetings to gather public comment will be announced through news releases and notices.

FOR FURTHER INFORMATION CONTACT: Robert Lloyd (*akrofrmp@blm.gov*) at (907) 267–1246 or Amy Lewis (*Amy_Lewis@urscorp.com*) at (907) 261–9730.

SUPPLEMENTARY INFORMATION: The Ring of Fire RMP planning area covers 1.3 million acres of BLM-administered lands. The Ring of Fire Draft RMP/EIS focuses on the principles of multiple use and sustained yield as prescribed by section 202 of FLPMA. The Ring of Fire Draft RMP/EIS considers and analyzes four alternatives, including a No Action and a preferred alternative. The alternatives provide variable levels of support to all resources and programs present in the planning area and are designed to guide future management and resolve land management issues identified during the early stages of the planning process. The alternatives were developed based on extensive public scoping and involvement.

There are five main resources addressed through this planning process. The Lands and Realty section addresses the need to determine the appropriate mix of lands and realty actions needed to provide a balance between land use and resource protection. The Off-highway Vehicles (OHV) section addresses management of access trails and roads for the use of OHVs for various purposes, including recreation, commercial uses, subsistence activities, and the general enjoyment of public lands while protecting natural and cultural resources. The Recreation section examines how recreation should be managed to provide a diversity of experiences on BLM-managed lands. The document analyzes what measures are necessary to ensure that a diversity of recreational opportunities is maintained, and what level of commercial recreational use is appropriate to maintain a diversity of recreational opportunities. The Leasable Minerals section and the Locatable Minerals section address the need to determine which areas should be made available for mineral exploration and development One Area of Critical Environmental Concern (ACEC) is recommended for designation in the preferred alternative and is also considered in other alternatives—the Neacola Mountains ACEC, containing approximately 229,000 acres. The ACEC would have the following resource use limitations: (1) Closed to locatable and saleable mineral entry (but open to mineral leasing), (2) OHV use limited, (3) VRM Class III, and (4) ROW avoidance. The public involvement and collaboration process implemented for this effort included 10 public scoping meetings. Notices of these meetings and invitations to participate in the development of this plan were sent to over 400 individuals, organizations, and tribal entities, as well as to State, Federal, and local government agencies. Meetings were held at the Native Village of Eklutna in Eklutna and at the Chilkat Indian Village IRA in Klukwan. Continuous involvement throughout the planning process has taken place with the State of Alaska, and several meetings have been held between the State and the BLM at varying levels of authority to discuss the Ring of Fire RMP/EIS. A joint BLM-State position was created as part of this project, with that person acting as liaison between the State of Alaska and the BLM during this planning process.

After comments on the Ring of Fire Draft RMP/EIS are reviewed and any adjustments to the document are made, a Proposed RMP and Final EIS are expected to be available in spring 2006.

Julia Dougan,

Acting State Director.

[FR Doc. 05–19492 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–05–1610–DT]

Notice of Availability of Proposed Plan Amendment and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan Amendment (RMPA) and Final Environmental Impact Statement (EIS) for the Clear Creek Management Area (CCMA).

DATES: For decisions being considered that would amend the existing plan decisions, BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes its notice of receipt of the Final EIS for the CCMA in the **Federal Register**. Instructions for filing of protests are described in the front cover of the Proposed RMPA and Final EIS for the CCMA and included in the **SUPPLEMENTARY INFORMATION** section of this notice. Decisions that make designations on individual routes are not protestable, but are appealable to the Interior Board of Land Appeals under 43 CFR part 4 upon adoption of a Record of Decision.

FOR FURTHER INFORMATION CONTACT: George Hill, (831) 630–5000.

SUPPLEMENTARY INFORMATION: This planning project considers designating a route network and off-highway vehicle (OHV) area designations (open, limited, closed) for serpentine barren areas (soils devoid of vegetation) and the designation of expanded boundaries for the San Benito Mountain Research Natural Area (SBMRNA), an Area of Critical Environmental Concern (ACEC) in the CCMA. The planning area is approximately 75,000 acres located in San Benito and Fresno Counties, California and is managed by the (BLM) Hollister Field Office. The area is currently managed according to the CCMA RMPA, as adopted in 1999.

The Proposed Action contained in the Proposed RMPA and Final EIS for the CCMA contains the following proposed decisions: Designations for OHV use on the routes currently inventoried and assessed by the BLM; adoption of route designation and area designation criteria for serpentine barren areas; and designation of an expanded boundary and interim management for the SBMRNA. The Draft RMPA and Draft EIS for the CCMA was published in May 2004. BLM accepted public comment on the Draft EIS from July 16 through November 15 of 2004. Comments received from the public during the review period and comments from

internal BLM review are incorporated into the Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change the proposed decisions. Copies of the Proposed RMPA and Final EIS for the CCMA have been sent to affected Federal, State, and local government agencies and to interested parties. Copies of the document are also available for public inspection at: BLM Hollister Field Office, 20 Hamilton Court, Hollister, CA; and BLM California State Office, 2800 Cottage Way, Sacramento, CA. Instructions for filing a protest with the Director of the BLM regarding the Proposed Plan/Final EIS may be found at 43 CFR 1610.5. A protest may only raise those issues with plan-level decisions that were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

a. The name, mailing address, telephone number, and interest of the person filing the protest.

b. A statement of the part or parts of the plan and the issue or issues being protested.

c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

d. A concise statement explaining why the protestor believes the State Director's decision is wrong.

All protests must be in writing and mailed to the following address:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior.

Dated: July 14, 2005.

Robert Beehler,

Hollister Field Office Manager.

[FR Doc. 05–19588 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 330–05–1610–DP–082A–241E]

Notice of Availability of Lake Havasu Field Office Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Lake Havasu Field Office (Arizona) Draft Resource Management Plan and Draft Environmental Impact Statement.

SUMMARY: In compliance with the Bureau of Land Management (BLM) planning regulations, title 43 Code of Federal Regulations (CFR) 1610.2(f)(3) and the Council on Environmental Quality Regulations, title 40 CFR 1502.9(a), the BLM hereby gives notice that the Lake Havasu Field Office Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS) is available for public review and comment. The planning area encompasses more than 1.3 million acres of the BLM-administered lands.

DATES: Written comments on the DRMP/DEIS will be accepted for 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through local media.

ADDRESSES: Written comments may be mailed to Tim Smith, Lake Havasu Field Manager, Resource Management Plan, Lake Havasu Field Office, 2610 Sweetwater, Lake Havasu City, Arizona 86406. You may also comment using the following e-mail address: *Lake_havasu@blm.gov.* Finally, you may hand-deliver comments to the above listed address. A minimum of five public meetings will be held during the 90-day public review and comment period during which oral and written comments will be accepted. Exact dates, places, and times of public meetings will be announced using local media, and may be posted on the Arizona BLM Web page, or you may contact Gina Trafton at (928) 505–1273 for further information.

Public comments, including names and street addresses of respondents, will be available for public review at the BLM Lake Havasu Field Office, 2610 Sweetwater, Lake Havasu City, Arizona 86406, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Gina Trafton, Planning and Environmental Coordinator, Bureau of Land Management, 2610 Sweetwater, Lake Havasu City, Arizona 86406, telephone (928) 505–1273.

SUPPLEMENTARY INFORMATION: A copy of the Lake Havasu Field Office Draft Resource Management Plan and Draft Environmental Impact Statement is available for review via the Internet from a link at *http://www.az.blm.gov* (subject to change). You may also obtain an electronic (on CD–ROM), or paper copy at the Bureau of Land Management, Lake Havasu Field Office at the address listed previously or by contacting Gina Trafton at (928) 505–1273.

The Lake Havasu Field Office Draft Resource Management Plan/Draft Environmental Impact Statement is being developed by the BLM. The DRMP/DEIS includes strategies for protecting and preserving the biological, cultural, recreational, geological, educational, scientific, and scenic values that balance multiple uses of the BLM-administered lands throughout the Lake Havasu Field Office planning area.

The preferred alternative attempts to accomplish the above in coordination with the Bureau of Reclamation, U.S. Fish and Wildlife Service, Arizona Department of Transportation, Arizona State Land Department, Arizona Game and Fish Department, California Department of Fish and Game, the BLM and other land managing agencies within the boundaries of the planning area. The range of alternatives in this draft incorporates planning decisions brought forward from the current BLM planning documents, the Yuma District Resource Management Plan (1987), Kingman Resource Area Resource Management Plan (1995), Lower Gila

South Resource Management Plan (1988) and Lower Gila North Management Framework Plan (1983). The preferred alternative identifies five potential Areas of Critical Environmental Concern (ACEC): Beale Slough Riparian and Cultural ACEC (2,395 acres); Bullhead Bajada Natural and Cultural ACEC (7,090 acres); Crossman Peak Scenic ACEC (48,855 acres); Swansea Historic District ACEC (5,973 acres); and, Three Rivers Riparian ACEC (2,246 acres). There are up to four additional potential ACECs in one or more of the other alternatives: Black Peak Cultural ACEC (740 acres); Cienega Mining District Historic ACEC (6,649 acres); Lake Havasu Aubrey Hills Natural Area ACEC (19,088 acres); and, Whipple Wash Natural Area ACEC (10,962 acres). The following types of resource use limitations would generally apply to these ACECs: (1) Design grazing prescriptions to achieve the desired plant community objectives; (2) Recreation facilities would be limited to projects that protect ACEC values; (3) Camping would be limited to developed or signed sites; (4) Travel would be permitted only on designated open and signed routes. For detailed information see Chapter 2, Description of Alternatives, Special Area Designations section.

A Proposed Resource Management Plan and Final Environmental Impact Statement will be prepared by the BLM for the Resource Management Plan accordance with planning regulations at 43 CFR 1610 and NEPA at 40 CFR 1502. The Lake Havasu Field Office Resource Management Plan affects only the BLM-administered Federal lands and Federal interests located within the planning area boundary.

Dated: September 16, 2005.

Elaine Y. Zielinski,

Arizona State Director.

[FR Doc. 05–19493 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–923–1430–ET; NMNM 055653]

Public Land Order No. 7645; Partial Revocation of Public Land Order No. 2051; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Public Land Order insofar as if affects 40.16 acres of public land withdrawn for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research purposes in connection with Federal programs.

EFFECTIVE DATE: October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

SUPPLEMENTARY INFORMATION: The land has been patented to a mining claimant. Since the land has been conveyed out of Federal ownership this is a record-clearing action only.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 2051, which withdrew public land for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research purposes in connection with Federal programs, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
Sec. 23, lots 19 and 20 (formerly described as S½ of lots 3 and 4).

The area described contains 40.16 acres in Dona Ana County.

Dated: September 13, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–19645 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 56994, NMNM 56995, NMNM 56996, NMNM 56997, NMNM 56998, NMNM 56999, and NMNM 57000]

Public Land Order No. 7646; Revocation of Coal Classification Withdrawals; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes 7 Executive Orders in their entireties as to approximately 512,380 acres withdrawn for coal classification purposes. This order opens the lands to surface entry and nonmetalliferous mining.

EFFECTIVE DATE: October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, (505) 438–7597.

SUPPLEMENTARY INFORMATION: The lands were originally withdrawn to protect the potential coal resources from mining claims, but since coal is now a leaseable mineral the withdrawals are no longer needed. Copies of the original withdrawal orders containing legal descriptions of the lands involved are available from the BLM New Mexico State Office at the address listed above.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Orders dated December 23, 1910, February 6, 1911, April 22, 1911, May 18, 1911, August 25, 1915, October 14, 1915, and July 30, 1917, which withdrew lands for coal classification purposes, are hereby revoked in their entireties.

2. At 10 a.m. on October 31, 2005, the lands referenced in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 31, 2005, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on October 31, 2005 the lands referenced in Paragraph 1 will be opened to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 13, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–19646 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 17, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th Floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by October 17, 2005.

Beth L. Savage,

Acting Chief, National Register/National Historic Landmarks Program.

COLORADO

Fremont County

South Canon High School, 1020 Park Ave., Canon City, 05001183

MISSOURI

Jackson County

Kansas City Police Station Number 4, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS), 115 W. 19th St., Kansas City, 05001184

OHIO

Fulton County

Goll Homestead, 26093 Township Rd. F, Archbold, 05001185

Hamilton County

Oesterlein Machine Company—Fashion Frocks, Inc. Complex, 3301 Colerain Av. and 1326 Monmouth Av., Cincinnati, 05001186

Stark County

Rochester Square Historic District, 6 & 10 Lintner Ct., NW.; 14, 207, 212, 222, 228 & 232 Center St., W., Navarre, 05001187

SOUTH DAKOTA

Deuel County

Hoffman Barn, 16937 482 Av., Revillo, 05001188

Hamlin County

First National Bank of Norden, 503 Main Av., Lake Norden, 05001189

Lawrence County

Saint Onge State Bank, 214 Center St., Saint Onge, 05001190

Tomahawk Lake Country Club, US 385, Deadwood, 05001191

TEXAS

Bell County

Temple Commercial Historic District, Roughly bounded by French Av., 3rd St., Av. D & 6th St., Temple, 05001192

Williamson County

Taylor Downtown Historic District, Roughly bounded by 5th, Washburn, 1st & Vance Sts., Taylor, 05001193

UTAH

Davis County

Bountiful Historic District, Roughly bounded by 200 W., 500 S., 400 E., & 400 N., Bountiful, 05001194

WISCONSIN

Price County

Wisconsin Concrete Park, WI 13 S., Worcester, 05001195

[FR Doc. 05–19524 Filed 9–29–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 3, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 17, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

COLORADO

Morgan County

German Evangelical Immanuel Congregational Church, 209 Everett St., Brush, 05001161

MISSOURI

Shannon County

Alton Club, Gravel road, 1.5 mi. W of MO 19 and 12 Mi. N of Eminence, Eminence, 05001162

St. Louis Independent City

Hamilton Place Historic District, 5900–6000 blks of Enright, Cates, and Clemens, St. Louis (Independent City), 05001164

Measuregraph Company Building, 4245 Forest Park Blvd., St. Louis (Independent City), 05001163

OKLAHOMA

Cherokee County

Logan, Leonard M., House, 531 Summit, Tahlequah, 05001165

TEXAS

Travis County

West Line Historic District, Roughly bounded by Baylor St., W. Fifth and Sixth Sts., MoPac Expressway, Austin, 05001166

[FR Doc. 05–19525 Filed 9–29–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 10, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written

or faxed comments should be submitted by October 17, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARKANSAS

Faulkner County

Lee, Carl and Esther, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 17493 US 65S, Damascus, 05001170

Tyler—Southerland House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 36 Southerland, Conway, 05001168

Ward, Earl and Mildred, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 1157 Mitchell St., Conway, 05001169

Webb, Joe and Nina, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 2945 Prince, Conway, 05001171

Washington County

Prairie Grove Battlefield (Boundary Increase II), N of US 62, E of Prairie Grove, Prairie Grove, 05001167

COLORADO

Montrose County

North Rim Road, Black Canyon of the Gunnison National Park, Black Canyon of the Gunnison National Park, Crawford, 05001181

GEORGIA

Bartow County

ATCO–Goodyear Mill and Mill Village Historic District, Roughly bounded by Sugar Valley Rd., Cassville rd. and Pettit Creek, Wingfoot Trail and Litchfield St., Cartersville, 05001172

MAINE

Androscoggin County

Keystone Mineral Springs, Keystone Rd., Poland, 05001175

Cumberland County

Battery Steele, Florida Ave., Peaks Island, Portland, 05001176

Lakeside Grange #63, Main St., jct. of Main St. and Lincoln St., Harrison, 05001173

Hancock County

Garland Farm, 1029 ME 3, Bar Harbor, 05001174

MINNESOTA

Cook County

Grand Portage National Monument, Off US 61 within the area of the Grand Portage Indian Reservation, Grand Portage, 05001180

MISSOURI

Madison County

St. Louis, Iron Mountain and Southern Railroad Depot, Allen St., 150 ft. No of Jct. of Allen and Kelly Sts., Fredericktown, 05001178

MONTANA

Park County

Hepburn, John, Place, 626 E. River Rd., Emigrant, 05001177

New Mexico

Santa Fe County

Kelly, Daniel T., House, (Buildings Designed by John Gaw Meem MPS) 531 E. Palace Ave., Santa Fe, 05001182

OREGON

Multnomah County

Harrison Court Apartments, 1834 SW. 5th Ave., Portland, 05001179

[FR Doc. 05–19526 Filed 9–29–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice to solicit comments and hold public scoping meetings on the development of Lower Basin shortage guidelines and coordinated management strategies for the operation of Lake Powell and Lake Mead under low reservoir conditions.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) proposes to conduct public scoping meetings and prepare an EIS for the development of Lower Colorado River Basin Shortage Guidelines and Coordinated Management Strategies for Operation of Lake Powell and Lake Mead Under Low Reservoir Conditions. The Secretary of the Interior (Secretary) has directed Reclamation to develop additional Colorado River management strategies to address operations of Lake Powell and Lake Mead under low reservoir conditions.

The proposed action is to develop these guidelines and strategies. Through the NEPA process initiated by this **Federal Register** notice, Reclamation is considering development of: (1) Specific guidelines that will identify those circumstances under which the Department of the Interior (Department) would reduce annual water deliveries from Lake Mead to the Lower Basin States below the 7.5 million acre-feet (maf) Lower Basin apportionment and the manner in which those deliveries would be reduced, and (2) coordinated management strategies for the operation of Lake Powell and Lake Mead.

Alternatives to be analyzed in the EIS have not been developed at this time and will be developed through the NEPA process, including through the upcoming EIS scoping meetings.

DATES AND ADDRESSES: Four public meetings will be held to solicit comments on the scope of specific shortage guidelines and other coordinated management strategies and the issues and alternatives that should be analyzed. Oral and written comments will be accepted at the public meetings to be held at the following locations:

- Tuesday, November 1, 2005—6 p.m. to 8 p.m., Hilton Salt Lake City Center, Topaz Room, 255 South West Temple, Salt Lake City, Utah.
- Wednesday, November 2, 2005—6 p.m. to 8 p.m., Adam's Mark Hotel, Tower Court D, 1550 Court Place, Denver, Colorado.
- Thursday, November 3, 2005—6 p.m. to 8 p.m., Arizona Department of Water Resources, Third Floor, Conference Rooms A&B, 500 North Third Street, Phoenix, Arizona.
- Tuesday, November 8, 2005—6 p.m. to 8 p.m., Henderson Convention Center, Grand Ballroom, 200 South Water Street, Henderson, Nevada.

Written comments on the proposed development of these strategies may be sent by close of business on *Wednesday, November 30, 2005*, to: Regional Director, Bureau of Reclamation, Lower Colorado Region, Attention: BCOO–1000, PO Box 61470, Boulder City, Nevada 89006–1470, faxogram at (702) 293–8156, or e-mail at *strategies@lc.usbr.gov*; and/or Regional Director, Bureau of Reclamation, Upper Colorado Region, Attention: UC–402, 125 South State Street, Salt Lake City, Utah 84318–1147, faxogram at (801) 524–3858, or e-mail at *strategies@uc.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Terrance J. Fulp, PhD., at (702) 293–8500 or e-mail at *strategies@lc.usbr.gov*; and/or Randall Peterson at (801) 524–3633 or e-mail at *strategies@uc.usbr.gov*. If special assistance is required regarding accommodations for attendance at any of the public meetings, please call Nan Yoder at (702) 293–8495, faxogram at (702) 293–8156, or e-mail at *nyoder@lc.usbr.gov* no less than 5 working days prior to the applicable meeting(s).

SUPPLEMENTARY INFORMATION: In recent years the Colorado River Basin experienced the worst five-year drought

in recorded history. Drought in the Basin has impacted system storage, while demands for Colorado River water supplies have continued to increase. In the future, low reservoir conditions may not be limited to drought periods as additional development of Colorado River water occurs. The Colorado River is of strategic importance in the southwestern United States for water supply, hydropower production, recreation, fish and wildlife habitat, and other benefits. In addition, the Republic of Mexico has an allocation to the waters of the Colorado River pursuant to a 1944 treaty with the United States.

In 2001, the Department adopted Interim Surplus Guidelines (66 FR 7772) that are used by the Secretary in making annual determinations regarding ''Normal'' and ''Surplus'' conditions for the operation of Lake Mead. Since adoption, these Guidelines have, among other operational and management benefits, allowed the Department and entities in Arizona, California, and Nevada that rely on the Colorado River greater predictability in identifying when Colorado River water in excess of 7.5 maf will be available for use within these three States. In contrast, at this time the Department does not have detailed guidelines in place for annual determinations of releases from Lake Mead of less than 7.5 maf to water users in the three Lower Division States of Arizona, California, and Nevada (often referred to as a ''shortage'' condition on the lower Colorado River). Therefore, water users who rely on the Colorado River in these States are not currently able to identify particular reservoir conditions under which the Secretary would release less than 7.5 maf for use on an annual basis. Nor are these water users able to identify the amount of any potential future annual reductions in water deliveries.

Over the past year, the seven Colorado River Basin States have been proactively discussing strategies to address the recent period of system-wide drought in the Colorado River Basin. In addition, Reclamation has conducted detailed briefings for stakeholders in the Colorado River Basin and other interested entities regarding future scenarios for Colorado River operations.

Currently, each year, the Secretary establishes an Annual Operating Plan (AOP) for the Colorado River Reservoirs. The AOP describes how Reclamation will manage the reservoirs over a 12-month period, consistent with the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Long-Range Operating Criteria), the Decree entered by the U.S. Supreme Court in the *Arizona* v. *California* litigation, and other provisions of applicable Federal law. Reclamation consults annually with the Colorado River Basin States, Indian tribes, and other interested parties in the development of the AOP. Further, as part of the AOP process, the Secretary makes annual determinations under the Long-Range Operating Criteria regarding the availability of Colorado River water for deliveries to the Lower Division States. To meet the consultation requirements of Federal law, Reclamation also consults with the Colorado River Basin States, Indian tribes, and other interested parties during the five-year periodic reviews of the Long-Range Operating Criteria.

During the mid-year review of the 2005 AOP conducted this past spring, the Department received conflicting recommendations from the Colorado River Basin States regarding operations of Glen Canyon Dam for the remainder of the 2005 water year. In a May 2, 2005, letter to the Governors of the Colorado River Basin States, issued to complete the 2005 AOP mid-year review, the Secretary directed Reclamation to develop additional strategies to improve coordinated management of the reservoirs in the Colorado River system. Pursuant to that direction, Reclamation conducted a public consultation workshop on May 26, 2005, in Henderson, Nevada; issued a **Federal Register** notice soliciting public comments on June 15, 2005; and conducted public meetings on July 26 and July 28, 2005, in Henderson, Nevada, and Salt Lake City, Utah, respectively. Reclamation received a broad range of public comments and suggestions from these discussions, not all of which can be addressed in this proposed process. In addition, some suggestions may be part of ongoing or future efforts.

In order to assure the continued productive management and use of the Colorado River into the future, Reclamation is now soliciting public comments on the development of Lower Basin shortage guidelines and coordinated management strategies for the operation of Lake Powell and Lake Mead under low reservoir conditions. Reclamation will utilize a public process pursuant to NEPA. By this notice, Reclamation provides notice of its intent to prepare an EIS on this action, and provides notice of its upcoming EIS scoping meetings. Reclamation invites all interested members of the general public, including the seven Colorado River Basin States, Indian tribes, water and power contractors, environmental organizations, representatives of academic and scientific communities, representatives of the recreation industry, and other organizations and agencies to present oral and written comments concerning the format and scope of specific shortage guidelines and coordinated management strategies, and the issues and alternatives to be considered during the development of these proposed guidelines and strategies. Reclamation anticipates publishing a ''scoping report'' after completion of the public scoping meetings identified in this **Federal Register** notice.

All comments received will be considered as Reclamation develops formal alternatives under NEPA. Similar to the surplus guidelines referenced above, it is likely that these shortage guidelines will be interim in nature. It is the Department's intent that these guidelines and coordinated management strategies will provide guidance to the Secretary's AOP decisions, and provide more predictability to water users and the public throughout the Colorado River Basin, particularly those in the Lower Division States. The Department does not intend to evaluate the decommissioning of Glen Canyon Dam.

Public Disclosure

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondents' identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations, business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: September 22, 2005.

Rick L. Gold,

Regional Director—UC Region, Bureau of Reclamation.

Dated: September 22, 2005.

Jayne Harkins,

Deputy Regional Director—LC Region, Bureau of Reclamation.

[FR Doc. 05–19607 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 05–55]

San Luis Unit Long-Term Contract Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has made available for public review and comment a DEIS for the renewal of Long-Term Water Service Contracts for the San Luis Unit of the Central Valley Project (CVP). The DEIS describes and presents the environmental effects of three altern atives, including no action, for implementing the renewal of the Long-Term Water Service Contracts. A 45-day public comment period will be allowed to receive comments from individuals and organizations on the DEIS.

Reclamation issued a previous version of the DEIS on December 9, 2004 (69 FR 71424). Due to information received during the comment period on the previous DEIS, Reclamation has prepared and is issuing a new DEIS.

DATES: The DEIS is available for a 45-day public review period. Written comments on the DEIS will be accepted on or before November 21, 2005.

ADDRESSES: Send comments on the Draft EIS to Bureau of Reclamation, Mid-Pacific Region, Attn: Joe Thompson, 1243 ''N'' Street, Fresno, CA 93644.

Copies of the Draft EIS may be requested from Ms. Janet Sierzputowski, Reclamation, 2800 Cottage Way, Sacramento, CA 95825, or by calling (916) 978–5112. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Joe Thompson, Environmental Specialist, Reclamation, at (559) 487–5179.

SUPPLEMENTARY INFORMATION: The DEIS addresses impacts related to the renewal of long-term water service contracts between Reclamation and the contractors in the San Luis Unit. The alternatives present a range of water service agreement provisions that could be implemented for long-term contract renewals. The first alternative, the No-Action Alternative, consists of renewing water service contracts as described by the preferred alternative of the Programmatic Environmental Impact statement for the Central Valley Project Improvement Act. The No-Action Alternative serves as the basis for determining impacts of the action alternatives. A proposal by Reclamation was submitted to the contractors in 1999 with an alternative contract being submitted by the contractors in 2000. Reclamation and the Contractors have negotiated in a public forum the CVP-wide terms and conditions with these proposals serving as the basis for analysis of such ''bookends.'' The contract provisions that were selected as a result of the negotiation process together constitute the Preferred Alternative. The Preferred Alternative is described in the Alternatives section of the DEIS. The DEIS evaluates the Preferred Alternative against the No-Action Alternative for the environmental documentation that evaluates the impacts and benefits of renewing the long-term water service contracts.

Copies of the DEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 445–2072.
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Bureau of Reclamation, South Central California Area Office, 1243 ''N'' Street, Fresno, CA 93721.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.

The DEIS is also available for inspection in public libraries in Fresno, Madera, Merced, Kings, Stanislaus, and Kern counties.

Oral and written comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: July 19, 2005.

Allan Oto,

Acting Assistant Regional Director, Mid-Pacific Region.

[FR Doc. 05–19603 Filed 9–29–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to serve as members of Performance Review Board.

EFFECTIVE DATES: September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Jeri L. Buchholz, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairman of PRB—Vice-Chairman Deanna Tanner Okun.

Chairman of PRB—Commissioner Jennifer A. Hillman.

Member—Robert A. Rogowsky.

Member—Lyn M. Schlitt.

Member—Stephen A. McLaughlin.

Member—Lynn I. Levine.

Member—Robert G. Carpenter.

Member—Robert B. Koopman.

Member—James Lyons.

Member—Karen Laney-Cummings.

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

By order of the Chairman:

Issued: September 26, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–19608 Filed 9–29–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Compact Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal government and 25 States are parties to the Compact, which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-State system to exchange such records.

The United States Attorney General appointed 15 persons from Federal and State agencies to serve on the Compact Council. The Compact Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index System.

Matters for discussion are expected to include:

(1) Minimum standards for identification verification;

(2) Automation of manual name checks in IAFIS; and

(3) Modification of IAFIS to utilize State records when States can respond.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requesters will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on November 2, 2005, and from 9 a.m. until 3 p.m. on November 3, 2005.

ADDRESSES: The meeting will take place at the Albuquerque Marriott Pyramid North, 5151 San Francisco Road, NE., Albuquerque, New Mexico, telephone (505) 821–3333.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module B3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, facsimile (304) 625–2539.

Dated: September 23, 2005

David Cuthbertson,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 05–19561 Filed 9–29–05; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration to the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

the number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT20030001 (Jun. 13, 2003)
CT20030003 (Jun. 13, 2003)
CT20030004 (Jun. 13, 2003)
New Jersey

NJ20030003 (Jun. 13, 2003)
New York
NY20030003 (Jun. 13, 2003)
NY20030005 (Jun. 13, 2003)
NY20030010 (Jun. 13, 2003)
NY20030011 (Jun. 13, 2003)
NY20030013 (Jun. 13, 2003)
NY20030014 (Jun. 13, 2003)
NY20030015 (Jun. 13, 2003)
NY20030016 (Jun. 13, 2003)
NY20030017 (Jun. 13, 2003)
NY20030018 (Jun. 13, 2003)
NY20030019 (Jun. 13, 2003)
NY20030023 (Jun. 13, 2003)
NY20030025 (Jun. 13, 2003)
NY20030026 (Jun. 13, 2003)
NY20030031 (Jun. 13, 2003)
NY20030032 (Jun. 13, 2003)
NY20030033 (Jun. 13, 2003)
NY20030034 (Jun. 13, 2003)
NY20030036 (Jun. 13, 2003)
NY20030039 (Jun. 13, 2003)
NY20030041 (Jun. 13, 2003)
NY20030043 (Jun. 13, 2003)
NY20030045 (Jun. 13, 2003)
NY20030047 (Jun. 13, 2003)
NY20030048 (Jun. 13, 2003)
NY20030050 (Jun. 13, 2003)
NY20030051 (Jun. 13, 2003)
NY20030058 (Jun. 13, 2003)
NY20030071 (Jun. 13, 2003)
NY20030072 (Jun. 13, 2003)
NY20030075 (Jun. 13, 2003)
NY20030077 (Jun. 13, 2003)
Vermont
VT20030002 (Jun. 13, 2003)
VT20030026 (Jun. 13, 2003)
VT20030027 (Jun. 13, 2003)
VT20030029 (Jun. 13, 2003)
VT20030032 (Jun. 13, 2003)
VT20030033 (Jun. 13, 2003)
VT20030034 (Jun. 13, 2003)
VT20030035 (Jun. 13, 2003)
VT20030036 (Jun. 13, 2003)
VT20030038 (Jun. 13, 2003)

Volume II

Pennsylvania
PA20030001 (Jun. 13, 2003)
PA20030002 (Jun. 13, 2003)
PA20030004 (Jun. 13, 2003)
PA20030005 (Jun. 13, 2003)
PA20030006 (Jun. 13, 2003)
PA20030007 (Jun. 13, 2003)
PA20030008 (Jun. 13, 2003)
PA20030010 (Jun. 13, 2003)
PA20030012 (Jun. 13, 2003)
PA20030014 (Jun. 13, 2003)
PA20030015 (Jun. 13, 2003)
PA20030016 (Jun. 13, 2003)
PA20030019 (Jun. 13, 2003)
PA20030020 (Jun. 13, 2003)
PA20030021 (Jun. 13, 2003)
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PA20030024 (Jun. 13, 2003)
PA20030025 (Jun. 13, 2003)
PA20030026 (Jun. 13, 2003)
PA20030028 (Jun. 13, 2003)
PA20030030 (Jun. 13, 2003)
PA20030035 (Jun. 13, 2003)
PA20030040 (Jun. 13, 2003)
PA20030042 (Jun. 13, 2003)
PA20030054 (Jun. 13, 2003)
PA20030059 (Jun. 13, 2003)
PA20030060 (Jun. 13, 2003)
PA20030061 (Jun. 13, 2003)

Volume III

Georgia
GA20030004 (Jun. 13, 2003)
Mississippi
MS20030003 (Jun. 13, 2003)

Volume IV

Illinois
IL20030001 (Jun. 13, 2003)
IL20030002 (Jun. 13, 2003)
IL20030004 (Jun. 13, 2003)
IL20030005 (Jun. 13, 2003)
IL20030006 (Jun. 13, 2003)
IL20030007 (Jun. 13, 2003)
IL20030008 (Jun. 13, 2003)
IL20030036 (Jun. 13, 2003)
IL20030037 (Jun. 13, 2003)
IL20030043 (Jun. 13, 2003)
IL20030045 (Jun. 13, 2003)
IL20030046 (Jun. 13, 2003)
IL20030050 (Jun. 13, 2003)
IL20030051 (Jun. 13, 2003)
IL20030052 (Jun. 13, 2003)
IL20030053 (Jun. 13, 2003)
IL20030054 (Jun. 13, 2003)
IL20030061 (Jun. 13, 2003)
IL20030066 (Jun. 13, 2003)
IL20030067 (Jun. 13, 2003)
IL20030068 (Jun. 13, 2003)
IL20030069 (Jun. 13, 2003)
IL20030070 (Jun. 13, 2003)

Volume V

Arkansas
AR20030003 (Jun. 13, 2003)
Louisiana
LA20030002 (Jun. 13, 2003)
LA20030004 (Jun. 13, 2003)
LA20030006 (Jun. 13, 2003)
LA20030009 (Jun. 13, 2003)
LA20030012 (Jun. 13, 2003)
LA20030018 (Jun. 13, 2003)
LA20030040 (Jun. 13, 2003)
LA20030052 (Jun. 13, 2003)
Missouri
MO20030004 (Jun. 13, 2003)
MO20030018 (Jun. 13, 2003)
MO20030045 (Jun. 13, 2003)
MO20030048 (Jun. 13, 2003)
MO20030053 (Jun. 13, 2003)

Volume VI

Alaska
AK20030001 (Jun. 13, 2003)
AK20030002 (Jun. 13, 2003)
AK20030006 (Jun. 13, 2003)
Idaho
ID20030002 (Jun. 13, 2003)
ID20030015 (Jun. 13, 2003)
ID20030017 (Jun. 13, 2003)
ID20030019 (Jun. 13, 2003)
North Dakota
ND20030004 (Jun. 13, 2003)
Oregon
OR20030001 (Jun. 13, 2003)
OR20030004 (Jun. 13, 2003)
OR20030007 (Jun. 13, 2003)
Washington
WA20030001 (Jun. 13, 2003)
WA20030003 (Jun. 13, 2003)
WA20030007 (Jun. 13, 2003)

Volume VII

Arizona
AZ20030001 (Jun. 13, 2003)
Nevada
NV20030002 (Jun. 13, 2003)
NV20030005 (Jun. 13, 2003)
NV20030007 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

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

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–19248 Filed 9–29–05; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Independent Contractor Registration and Identification

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Independent Contractor Registration and Identification.

DATES: Submit comments on or before November 29, 2005.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977. Title 30 CFR 45.4(b) requires mine operators to maintain a written summary of information concerning each independent contractor present on the mine site. The information includes the trade name, business address, and telephone number; a brief description and the location on the mine of the work to be performed; MSHA identification number, if any; and the contractor's business address of record. This information is required to be provided for inspection and enforcement purposes by the mine operator to any MSHA inspector upon request.

Title 30 CFR 45.3 provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for service of documents upon the contractor. Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977 (Mine Act) and are responsible for violations of the Mine Act committed by them or their employees.

Although Independent Contractors are not required to apply for the identification number, they will be assigned one by MSHA the first time they are cited for a violation of the Mine Act. MSHA uses the information to issue a permanent MSHA identification number to the independent contractor.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to Independent Contractor Registration and Identification. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Compliance Assistance'', ''Compliance Information'' and the ''Paperwork Reduction Act Submissions.''

III. Current Actions

The information obtained from the contractors is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Independent Contractor Registration and Identification.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR part 45.

Total Respondents: 15,140.

Frequency: On occasion.

Total Responses: 100,665.

Estimated Total Burden Hours: 13,396 hours.

Estimated Total Burden Cost: $183,742.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 20th day of September, 2005.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 05–19550 Filed 9–29–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0247 (2005)]

State Plans for the Development and Enforcement of State Standards; Extension of 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 concerning its request for an extension of the information collection requirements associated with its regulations and program regarding State Plans for the development and enforcement of state standards (29 CFR 1902, 1952, 1953, 1954, 1955, 1956).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by November 29, 2005.

Facsimile and electronic transmission: Your comments must be received by November 29, 2005.

ADDRESSES: You may submit written comments, identified by OSHA Docket No. ICR 1218–0247 (2005), 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, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2350. The OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://dockets.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*. Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the above address. You may also contact Barbara Bryant at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Directorate of Cooperative and State Programs, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2244; e-mail, *bryant.barbara@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

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 with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, has practical utility, reporting burden (time and cost) is minimized, collection instruments are understandable, and OSHA's estimate of the information collection burden is correct. Currently, OSHA is soliciting comments concerning the extension of the information collection requirements contained in the series of regulations establishing requirements for the submission, initial approval, continuing approval, final approval, monitoring and evaluation of OSHA-approved State Plans:

- 29 CFR Part 1902, State Plans for the Development and Enforcement of State Standards;
- 29 CFR Part 1952, Approved State Plans for Enforcement of State Standards;
- 29 CFR Part 1953, Changes to State Plans for the Development and Enforcement of State Standards;
- 29 CFR Part 1954, Procedures for the Evaluation and Monitoring of Approved State Plans;
- 29 CFR Part 1955, Procedures for Withdrawal of Approval of State Plans; and
- 29 CFR Part 1956, State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States without Approved Private Employee Plans.

Section 18 of the Occupational Safety and Health Act offers an opportunity to the States to assume responsibility for the development and enforcement of State standards through the mechanism of an OSHA-approved State Plan. Absent an approved plan, States are precluded from enforcing occupational safety and health standards in the private sector with respect to an issue that is addressed by OSHA. Once approved and operational, the State provides most occupational safety and health enforcement and compliance assistance in the State in lieu of Federal OSHA. States also must extend jurisdiction to State and local government employees. In order to obtain and maintain State Plan approval, a State must submit various documents to OSHA describing its program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations. OSHA funds 50% of the costs required to be incurred by an approved State Plan with the State at least matching and providing additional funding at its discretion.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of OSHA's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) 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 participating States, for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the collection-of-information requirements associated with its State Plan regulations. In doing so, the Agency is proposing to adjust the total burden hours associated with the six regulations affecting the States that currently operate, or propose to operate, OSHA-approved State Plans from 8,522 hours to 10,522 to reflect the on-going development of a possible new State Plan. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of the information collection requirements related to its six State Plan regulations.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: State Plans for the Development and Enforcement of State Standards.

OMB Number: 1218–0247.

Affected Public: Designated State government agencies which are seeking or have submitted and obtained approval for State Plans for the development and enforcement of occupational safety and health standards.

Number of Respondents: 27.

Frequency of Response: On occasion; quarterly; annually.

Average Time Per Response: Varies from one hour to respond to an information survey to 80 hours to document State annual performance goals.

Estimated Total Burden Hours: 10,522.

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 document by (1) hard copy, (20 FAX transmission (facsimile) or (3) electronically through the OSHA Webpage. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials 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 are also posted on OSHA's Webpage and are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about material not available through the OSHA Webpage, and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as other relevant documents, are available on OSHA's Webpage. All submissions become public; therefore, private information, such as a social security number, should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Acting 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 September 27, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–19648 Filed 9–29–05; 8:45 am]

BILLING CODE 4610–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with sections 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make these materials described in this notice available to the public beginning November 16.

In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before October 31, 2005.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. on November 16, 2005. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facilities.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Michael Woywod, Acting Director, Nixon Presidential Materials Staff, 301–837–3117.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on November 16, 2005, consists of 40.8 cubic feet. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff.

1. One file group from the Staff Member and Office Files, listed below, will be made available to the public. This consists of materials that were transferred to the Central Files but were not incorporated into the Subject Files.

File Group: Joseph Fred Buzhardt Jr.: Pardon File for James R. Hoffa. Volume: 2.6 cubic feet.

2. *White House Central Files, Name Files:* Volume: 1 Cubic Foot. Nine files are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the subject files. The Name Files relating to the following nine individuals will be made available with this opening: Bessell, Peter; Malchow, Karin; Massa, Kevin; Rehnquist, William; Rockefeller, Nelson; Schneider, Joseph E.; Vanoun, Sander; Weegar, Hannah; Whalen, Steve.

3. In accordance with the provisions of Executive Order 12958, as amended, several series within the National Security Council files have been systematically reviewed for declassification and will be made available.

National Security Council Files series: Volume: 35.2 cubic feet.

4. *Previously restricted materials Volume:* 2 cubic feet.

A number of documents which were previously withheld from public access have been re-reviewed for release and or declassified under the provisions of Executive Order 12958, as amended, or in accordance with 36 CFR 1275.56 (Public Access Regulations).

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: September 26, 2005.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 05–19571 Filed 9–29–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 74, ''Material Control and Accounting of Special Nuclear Material (SNM);'' NUREG–1065, Rev. 2, ''Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low Enriched Uranium Facilities;'' NUREG/CR–5734, ''Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control Plan Required for Low-Enriched Uranium Enrichment Facilities;'' and NUREG–1280, Rev. 1, ''Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment.''

3. The form number if applicable: N/A.

4. How often the collection is required: Submission of the FNMC plan is a one-time requirement which has been completed by all current licensees. However, licensees may submit amendments or revisions to the plans as necessary. In addition, specified inventory and material status reports are required annually or semi-annually. Other reports are submitted as events occur.

5. Who will be required or asked to report: Persons licensed under 10 CFR part 70 who possess and use certain forms and quantities of SNM.

6. An estimate of the number of annual responses: 134.

7. The estimated number of annual respondents: 22.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 9064 (1,269 hours for reporting and 7,795 hours for recordkeeping (an average of 53 hours per response and 71 hours annually for each of 110 recordkeepers).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A .

10. Abstract: 10 CFR part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess, use, and produce strategic special nuclear material, and special nuclear material of moderate strategic significance and low strategic significance. The information is used by NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 31, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date: John A. Asalone, Office of Information and Regulatory Affairs (3150–0123), 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 22nd day of September, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–5332 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (the licensee) to withdraw its April 25, 2003, application, as supplemented May 21, 2003, June 11, 2003, and June 30, 2005, for a proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station (VYNPS), located in Windham County Vermont.

The proposed amendment would have revised the VYNPS Technical Specifications (TSs) related to instrumentation to correct deficiencies in the TSs, reduce operator work-arounds, improve and correct confusing and ambiguous TS requirements, and allow for process enhancements.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 5, 2003 (68 FR 46241). However, by letter dated September 7, 2005, the licensee withdrew the proposed amendment request.

For further details with respect to this action, see the application for amendment dated April 25, 2003, as supplemented on May 21, 2003, June 11, 2003, and June 30, 2005, and the license's letter dated September 7, 2005, which withdrew the application for license amendment. 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 01 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/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 23rd day of September, 2005.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–19620 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–389]

Florida Power and Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw its September 18, 2003, application for a proposed amendment to Facility Operating License No. NPF–16 for the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida.

The proposed amendment would have revised the licensing bases to

utilize the alternate source term as allowed in Title 10 of the Code of Federal Regulations, part 50, section 67 for reanalysis of the radiological consequences of the Updated Final Safety Analysis Report Chapter 15 accidents for St. Lucie Unit 2.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 28, 2003 (68 FR 61479). The Commission approved portions of the requested amendment as part of Amendment 138 to Facility Operating License No. NPF–16 on January 31, 2005. The Notice of Issuance was published in the **Federal Register** on February 15, 2005 (70 FR 7772). However, by letter dated August 11, 2005, the licensee withdrew the remaining portions of the proposed change that had not been approved in Amendment 138.

For further details with respect to this action, see the application for amendment dated September 18, 2003, and the licensee's letter dated August 11, 2005, which withdrew the application for license amendment. 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 01 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/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 22nd day of September 2005.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5329 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335]

Florida Power And Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw its September 18, 2003, application for a proposed amendment to Facility Operating License No. DPR–67 for the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

The proposed amendment would have revised the licensing bases to utilize the alternate source term as allowed in Title 10 of the Code of Federal Regulations, part 50, section 67 for reanalysis of the radiological consequences of the Updated Final Safety Analysis Report Chapter 15 accidents for St. Lucie Unit 1.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 28, 2003 (68 FR 61477). However, by letter dated August 11, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 18, 2003, and the licensee's letter dated August 11, 2005, which withdrew the application for license amendment. 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 01 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/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 22nd day of September 2005.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5330 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–11241]

Notice of Environmental Assessment Related to the Issuance of a License Termination Amendment to Byproduct Material License No. 22–00027–06, for St. Mary's University of Minnesota, Winona, MN

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: George M. McCann, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532–4352; telephone: (630) 829–9856; or by email at *gmm@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License No. 22–00027–06, which would terminate St. Mary's University of Minnesota's NRC Byproduct Material License. The NRC has prepared an Environmental Assessment in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the Environmental Assessment, the NRC has determined that a Finding of No Significant Impact is appropriate. The amendment terminating St. Mary's University of Minnesota's license will be issued following the publication of this Environmental Assessment and Finding of No Significant Impact.

I. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the licensee's request to terminate its license and release the site for unrestricted use in accordance with 10 CFR Part 20, Subpart E. The proposed action is in accordance with St. Mary's University of Minnesota's request to the U.S. Nuclear Regulatory Commission (NRC) to terminate its NRC Byproduct

Material License by letters dated January 10, 2005 (ADAMS Accession No. ML050140064), and July 18, 2005 (ADAMS Accession No. ML052290386). St. Mary's University of Minnesota was licensed during the late 1950s by the U.S. Atomic Energy Commission by License Numbers 22–27–03D60, 22–27–04C65, and 22–00027–05, to use byproduct materials such as phosphorus-32, carbon-14, hydrogen-3, cesium-137, strontium-90, and other similar radiological materials for university laboratory research and student classroom instruction. These licenses were subsequently terminated and superceded by NRC License No. 22–00027–06, issued to the university on May 19, 1975.

The university used the byproduct material in research laboratories, student classrooms, and radiological material preparation and storage areas located in the university's Brothers Charles and Hoffman Halls, located on its Winona Campus. The isotopes were used by authorized academic staff for research applications, and for the instruction of university students in related sciences. The radioisotopes were used and disposed in accordance with AEC/NRC regulations and license conditions. The disposal included one September 17, 1977, onsite burial of a small quantity of strontium-90 and cobalt-60, which was authorized pursuant to Title 10, Code of Federal Regulations (CFR), Part 20, Section 20.304 (rescinded in 1981).

The licensee requested that the NRC approve the termination of the university's NRC Byproduct Material License, which would authorize the unrestricted use of research laboratories, student classrooms, radioisotope storage and preparation areas, and the former burial area, all located on St. Mary's of Minnesota's, Winona, Minnesota campus. The licensee conducted surveys of the facility and provided this information to the NRC to demonstrate that the radiological conditions of the laboratories, former preparation and storage areas, and classrooms located in Brothers Charles and Hoffman Halls, and the former burial area is consistent with radiological criteria for unrestricted use in 10 CFR Part 20, Subpart E. No radiological remediation activities are required to complete the proposed action. The NRC completed a closeout inspection and survey of the licensee's facilities on August 17, 2005, NRC Inspection Report No. 030–11241/05–001(DNMS) (ADAMS Accession No. ML052340785) to conduct independent radiological surveys and to verify the licensee's survey findings.

Need for the Proposed Action

The licensee is requesting this license amendment because it no longer plans to conduct NRC-licensed activities at St. Mary's University of Minnesota. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on the proposed action for decommissioning that ensures that residual radioactivity is reduced to a level that is protective of the public health and safety and the environment.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided and surveys performed by St. Mary's University of Minnesota to demonstrate that the release of the university's facilities located at its Winona, Minnesota campus are consistent with the radiological criteria for unrestricted use specified in 10 CFR 20.1402. The NRC performed a closeout inspection and survey to confirm the university's findings. The NRC staff also evaluated the 10 CFR 20.304 burial using the Argonne National Laboratories' dose modeling program, RESRAD Version 6, and determined that the annual dose as a result of the burial is less than 1 millirem per year (mrem/yr), which is below the limit in 10 CFR 20.1402 of 25 mrem/yr for unrestricted use.

Based on its review, the staff determined that the radiological environmental impacts from the proposed action for university buildings are bounded by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). Additionally, no non-radiological or cumulative impacts were identified. Therefore, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment.

Alternatives to the Proposed Action

The only alternative to the proposed action of releasing the university's facilities for unrestricted use is to take no action. Under the no-action alternative, the university's facilities would remain under an NRC license and would not be released for unrestricted use. Denial of the license amendment request would result in no change to current conditions at the university. The no-action alternative is not acceptable because it is inconsistent with the NRC's Timeliness Rule, 10 CFR Part 30.36 ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas,'' which requires licensees who have ceased licensed activities to request termination of their radioactive material license. This alternative also would impose an unnecessary regulatory burden and limit potential benefits from future use of the university's facilities.

Conclusion

The NRC staff concluded that the proposed action is consistent with the NRC unrestricted release criteria specified in 10 CFR Part 20, Subpart E, Section 20.1402, ''Radiological Criteria for Unrestricted Use.'' Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action will not affect listed species or critical habitats. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

The NRC consulted with the Minnesota Department of Health. The Minnesota Department of Health, Radiation Control Unit, was provided the draft EA for comment on August 22, 2005. The State responded to the NRC by letter dated September 7, 2005, indicating, ''The Minnesota Department of Health (MDH) has reviewed the U.S. Nuclear Regulatory Commission's closeout inspection report for St. Mary's University of Minnesota. In addition, MDH has discussed the findings with NRC Region III staff. Based on a review of the closeout inspection report and our additional discussions, MDH has no comments or concerns.''

II. Finding of No Significant Impact

On the basis of the EA in support of the proposed license amendment to release the site for unrestricted use, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment. Thus, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further Information

A copy of this document will be available electronically for public inspection in the NRC Public Document

Room or from the Publicly Available Records (PARS) component of the NRC's document system. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The following references are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

1. Rademacher, Brother Jerome, Chairman, Department of Physics, Radiation Safety Officer, St. Mary's University of Minnesota, January 10, 2005 letter to the NRC (ML050140064).

2. Rademacher, Brother Jerome, Chairman, Department of Physics, Radiation Safety Officer, St. Mary's University of Minnesota, July 18, 2005 letter to the NRC (ML052290386).

3. U.S. Nuclear Regulatory Commission, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, August 2003.

4. NRC, NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volumes 1–3, September 2003.

5. Johns, Jr., George F., Supervisor, Radiation Control Unit, Minnesota Department of Health, September 7, 2005 letter to the NRC (ML052560161).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov*. Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 19th day of September 2005.

For the Nuclear Regulatory Commission,

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region III.

[FR Doc. 05–19647 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.188, entitled ''Standard Format and Content for Applications To Renew Nuclear Power Plant Operating Licenses,'' describes a method that the NRC staff finds acceptable for complying with the agency's regulatory requirements in Title 10, Part 54, of the *Code of Federal Regulations* (10 CFR part 54), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants'' (commonly known as the license renewal rule). Specifically, 10 CFR part 54 specifies the information that a nuclear power plant licensee must include in its application to renew an operating license issued by the NRC.

The NRC initially issued Regulatory Guide 1.188 in July 2001, after soliciting and resolving public comments on three draft regulatory guides (DG–1104 in August 2000, DG–1047 in August 1996, and DG–1009 in December 1990). As such, Regulatory Guide 1.188 incorporated lessons learned from the review of license renewal applications and Owners Group topical report reviews. The guide also incorporated relevant information from development of the ''Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR) (NUREG–1800),[1] and the ''Generic Aging Lessons Learned (GALL) Report'' (NUREG–1801),1 as well as a summary of public comments received on those documents (NUREG–1832, ''Analysis of Public Comments on the Revised License Renewal Guidance Documents.'')[2]

Since the NRC initially published Regulatory Guide 1.188 in July 2001, the staff proposed to update both the SRP-LR (NUREG–1800) and the GALL Report (NUREG–1801). Consequently, the staff also decided to revise Regulatory Guide 1.188 to reflect the proposed updates to the guidance documents. Toward that end, the staff prepared Draft Regulatory Guide DG–1140, which also included a modification through which the NRC staff endorsed (with two exceptions) Revision 5 of NEI 95–10, ''Industry Guideline for Implementing the Requirements of 10 CFR Part 54 '' The License Renewal Rule,'' which the Nuclear Energy Institute (NEI) published in January 2005.[3] Specifically, the staff took exception to the use of a portion of Appendix F to Revision 5 of NEI 95–10, from the unnumbered paragraph following paragraph 4.4 through the end of Section 4, ''Non-Safety SSCs Directly Connected to Safety-Related SSCs.'' In addition, the NRC staff took exception to the use of paragraph 5.2.3.1, ''Exposure Duration.''

The NRC staff then published a **Federal Register** notice (70 FR 5494) on February 2, 2005, to solicit stakeholder comments on Draft Regulatory Guide DG–1140 and/or Revision 5 of NEI 95–10, and specifically on any inconsistency or incompatibility between the guidance in these documents and the NRC guidance set forth in NUREG–1800 and NUREG–1801. Toward that end, the NRC also held a public workshop on March 2, 2005, to give participants an opportunity to ask questions, obtain further information, offer comments and opinions, and otherwise facilitate the formulation and preparation of written

[1] Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service at 5285 Port Royal Road, Springfield, VA 22161; *http://www.ntis.gov;* or (703) 487–4650. Copies are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; or e-mail *PDR@nrc.gov*. These documents are also available electronically through the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

[2] Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service at 5285 Port Royal Road, Springfield, VA 22161; *http://www.ntis.gov;* or (703) 487–4650. Copies are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; or e-mail *PDR@nrc.gov*. These documents are also available electronically through the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

[3] Copies are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; or e-mail *PDR@nrc.gov*. Revision 5 of NEI 95–10 is also available through the NRC's license renewal Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/guidance.html#nuclear,* and through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML050280113. Note, however, that the NRC has temporarily limited public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

comments for NRC staff consideration of the revised license renewal guidance documents.

The public comment period closed on March 31, 2005, without the submission of any stakeholder comments. However, in response to the exceptions stated in DG–1140, NEI issued Revision 6 of NEI–95–10 in June 2005 [4] to accept the NRC staff's position with respect to those issues, thereby rendering the staff's two exceptions unnecessary. Having reviewed this latest revision of NEI 95–10, the NRC staff finds Revision 6 acceptable for use in implementing the license renewal rule, without exceptions, as discussed in Revision 1 of Regulatory Guide 1.188. Applicants may meet the intent of the license renewal rule using methods other than those provided in Revision 6 of NEI 95–10; however, the NRC staff will determine the acceptability of such methods on a case-by-case basis.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Revision 1 of Regulatory Guide 1.188 may be directed to Linh N. Tran at (301) 415–4103 or by e-mail to *LNT@nrc.gov.*

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Revision 1 of Regulatory Guide 1.188 is also available electronically through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML051920430. Note, however, that the NRC has temporarily limited public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of September, 2005.

For the U.S. Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 05–19704 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

[4] Copies are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; e-mail *PDR@nrc.gov.* Revision 6 of NEI 95–10 is also available through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML051860406. Note, however, that the NRC has temporarily limited public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

NUCLEAR REGULATORY COMMISSION

Notice of Availability of NUREG–1800, Revision 1, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' NUREG–1801, Revision 1, ''Generic Aging Lessons Learned (GALL) Report,'' and NUREG–1832, ''Analysis of Public Comments on the Revised License Renewal Guidance Documents''

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1800, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' Revision 1 and NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report,'' Revision 1. These documents describe methods acceptable to the NRC staff for implementing the license renewal rule, as well as techniques used by the NRC staff in evaluating applications for license renewal. The draft versions of these documents were issued for public comment on February 1, 2005 (70 FR 5254). The NRC staff assessment of public comments is being issued as NUREG–1832, ''Analysis of Public Comments on the Revised License Renewal Guidance Documents.''

ADDRESSES: Electronic copies are available in the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS). The Public Electronic Reading Room is accessible from the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html.* NUREG–1800, Revision 1, is under ADAMS Accession number ML052110007; NUREG–1801, Revision 1, is under ADAMS Accession numbers ML052110005 (Volume 1) and ML052110006 (Volume 2); and NUREG–1832 (Analysis of Public Comments) is under ADAMS Accession number ML052110004. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Dozier, License Renewal Project Manager, Office of Nuclear Reactor Regulation, Mail Stop O–11F1, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, telephone 301–415–1014, or by e-mail at *jxd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Standard Review Plan for Review of LR Applications for Nuclear Power Plants, Rev. 1

The NRC staff revised the July 2001 version of NUREG–1800, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR). The SRP–LR provides guidance to NRC staff reviewers in performing safety reviews of applications to renew licenses of nuclear power plants in accordance with the license renewal rule. The SRP–LR, Revision 1, is under ADAMS Accession number ML052110007. The SRP–LR is revised to incorporate lessons learned from the review of a number of previous license renewal applications, as well as to make changes corresponding to the update of the GALL Report. The SRP–LR, Revision 1, contains four major chapters: (1) Administrative Information; (2) Scoping and Screening Methodology for Identifying Structures and Components Subject to Aging Management Review, and Implementation Results; (3) Aging Management Review Results; and (4) Time-Limited Aging Analyses. In addition, three Branch Technical Positions are in an Appendix to the SRP–LR, Revision 1.

Generic Aging Lessons Learned (GALL) Report, Revision 1

The Generic Aging Lessons Learned (GALL) Report, Revision 1, is an update to the July 2001 version; the report format is largely unchanged. The GALL Report, Revision 1, Volumes 1 and 2, are available under ADAMS Accession number ML052110005 and ML052110006, respectively. The adequacy of the generic aging management programs in managing certain aging effects for particular structures and components will continue to be evaluated based on the review of the following ten program elements: (1) Scope of program; (2) preventive actions; (3) parameters monitored or inspected; (4) detection of aging effects; (5) monitoring and trending; (6) acceptance criteria; (7) corrective actions; (8) confirmation process; (9) administrative controls; and (10) operating experience. The GALL Report is a technical basis document for the SRP–LR and should be treated in the same manner as an approved topical report that is applicable generically.

Analysis of Public Comments on the Revised LR Guidance Documents

On February 1, 2005, the NRC announced (70 FR 5254) the issuance for public comment and availability a draft of ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants' and a draft ''Generic Aging Lessons Learned (GALL) Report.'' The NRC also announced a public workshop that was held on March 2, 2005, to facilitate gathering public comment on the draft documents. NUREG–1832 contains the NRC response to stakeholders' comments. The dispositions are prepared in a table format and contained in five appendices. Appendix A addresses the specific written comments submitted by the Nuclear Energy Institute (NEI), Appendix B addresses the comments from the Advisory Committee on Reactor Safeguards (ACRS), Appendix C addresses the participant comments from the license renewal public workshop on March 2, 2005, Appendix D addresses the written comments submitted by other public stakeholders, and Appendix E provides a comparison of the aging management review line items from the January 2005 GALL Report to the September 2005 GALL Report.

Dated at Rockville, Maryland, this 27th day of September, 2005.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–19680 Filed 9–29–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

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: RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Public Law 100–647), the amount of each employer's contribution is determined by the RRB, primarily on the basis of RUIA benefit payments made to the employees of that employer. These experienced based contributions, take into account the frequency, volume and duration of RUIA benefits, both unemployment and sickness, attributable to a railroad's employees. Each employer's contribution rate includes a component for administrative expenses and a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act, is currently utilized by the RRB for the reporting and remitting of quarterly contributions by railroad employers. The RRB utilizes a manual version of Form DC–1 and also provides railroad employers with the option of reporting the required information and remitting their quarterly contributions via an Internet equivalent version Form DC–1.

The RRB estimates that 2,160 responses are received annually. One response is requested quarterly of each respondent. Completion is mandatory. The RRB proposes no changes to Form DC–1. The estimated completion for the manual and Internet version of Form DC–1 is estimated at 25 minutes.

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. 05–19582 Filed 9–29–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 3, 2005:

A Closed Meeting will be held on Thursday, October 6, 2005 at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, October 6, 2005 will be:

Formal orders of private investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 27, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–19698 Filed 9–28–05; 11:40 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52505; File No. SR–Amex–2005–056]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Requirement that Registered Options Traders May Only Sign on to Auto-Ex for ETFs Traded by the Same or Adjoining Specialists and Shall Sign on to Auto-Ex for a Maximum of Fifteen ETFs

September 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 13, 2005, the Amex submitted Amendment No. 1 to the proposed rule change.[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 Amex proposes amendments to Amex Rule 958, Commentary .10 and Amex Rule 958–ANTE, Commentary .09, to establish that Registered Options Traders (''ROTs'') may only sign on to Auto-Ex for Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively ''Exchange-Traded Funds'' or ''ETFs'') traded by the same or adjoining specialists, for a maximum of three (3) contiguous panels, and shall also not sign on to Auto-Ex for more than a maximum of fifteen (15) ETFs.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

Rule 958. Options Transactions of Registered Traders

(a)–(h)—No change.

Commentary * * *

.01–.09—No change.

.10 *(a)* Transactions on the Floor in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide (''Other Securities''), and Trust Issued Receipts listed pursuant to Amex Rules 1200 *et seq.* which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by Registered Traders who are regular members. Transactions by Registered Traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Amex Rule 111, Commentary .01 shall not apply to such transactions. (See Amex Rule 111, Commentary .12, and Amex Rule 114, Commentary .14.)

(b) A Registered Trader who is logged onto Auto-Ex shall only sign on to Auto-Ex for Portfolio Depository Receipts, Index Fund Shares and Trust Issued Receipts (collectively ''Exchange Traded Funds'' or ''ETFs'') traded on the same or contiguous panels, i.e. ETFs traded by two adjoining Specialists, or ETFs traded by the same Specialist for a maximum of three (3) panels. A Registered Trader also shall not sign on to Auto-Ex for more than fifteen (15) ETFs. A Senior Floor Official may modify the foregoing restrictions if he determines that a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

* * * * *

Rule 958. ANTE Options Transactions of Registered Options Traders

(a)–(i)—No change.

Commentary * * *

.01–.08—No change.

.09 *(a)* Transactions on the Floor and through the facilities of the Exchange in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide (''Other Securities''), and Trust Issued Receipts listed pursuant to Amex Rules 1200 *et seq.* which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected by registered options traders who are regular members. Transactions by registered options traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated September 13, 2005, which replaced the original filing in its entirety (''Amendment No. 1'').

trading rules, shall be effected in accordance with the provisions of this rule. In addition, Amex Rule 111, Commentary .01 shall not apply to such transactions. (See Amex Rule 111, Commentary .12, and Amex Rule 114, Commentary .14.)

(b) A Registered Trader who is logged onto Auto-Ex shall only sign on to Auto-Ex for Portfolio Depository Receipts, Index Fund Shares and Trust Issued Receipts (collectively ''Exchange Traded Funds'' or ''ETFs'') traded on the same or contiguous panels, i.e. ETFs traded by two adjoining Specialists, or ETFs traded by the same Specialist for a maximum of three (3) panels. A Registered Trader also shall not sign on to Auto-Ex for more than fifteen (15) ETFs. A Senior Floor Official may modify the foregoing restrictions if he determines that a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 958(c) and Amex Rule 958(c)–ANTE currently provide that an ROT is required to make competitive bids and offers necessary to contribute to the maintenance of a fair and orderly market. ROTs must reasonably engage in dealings for their own accounts when there exists a lack of price continuity and a temporary disparity between the supply and demand of ETFs. As part of their market making activities in ETFs, ROTs may sign on to Auto-Ex, the Exchange's automatic execution system.

The Exchange proposes to amend Amex Rule 958, Commentary .10 and Amex Rule 958–ANTE, Commentary .09 to state that if an ROT logs onto Auto-Ex for ETFs, the ROT would only be allowed only to log onto contiguous panels, or on panels traded on by the same or adjoining specialists (*i.e.*, electronic order book work stations).[4] ROTs would be permitted to log onto a maximum of three (3) contiguous panels. The amendments to Amex Rule 958, Commentary .10 and Amex Rule 958–ANTE, Commentary .09 would also limit an ROT to trading in a maximum of fifteen (15) ETFs while signed onto Auto-Ex.[5] A Senior Floor Official would be permitted to modify these restrictions if he determines that an ROT is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

The Exchange believes the foregoing amendments are necessary to ensure that ROTs fulfill their market-making obligations to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market in ETFs, by encouraging ROTs logged onto Auto-Ex to remain in the crowd. In order to make competitive bids, ROTs must remain in the crowd near the specialist panels. If ROTs were allowed to log onto Auto-Ex panels throughout the trading floor, it would be difficult for them to remain in the crowd. The Exchange notes that ROTs logged onto Auto-Ex may not be actively quoting because they do not post their own quotes on Auto-Ex; instead they receive executions, which are allocated to ROTs and specialists on the wheel, at the specialist quote. However, the Exchange's proposal, which only would permit a ROT to log onto three contiguous panels, would confine the ROT to one section of the trading floor with the intent of encouraging the ROT to remain in that area as part of the crowd in order to make competitive bids and offers in ETFs.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act[6], in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is 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.

[4] Each panel has one specialist assigned to it. Numerous ETFs may be traded on one panel.

[5] Although ETFs are traded on NETS (New Equity Trading System) and not ANTE (Amex New Trading Environment), Amex Rule 958–ANTE applies to ETFs.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no 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 solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve 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 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–Amex–2005–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–056. 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–Amex–2005–056 and should be submitted on or before October 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5325 Filed 9–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52503; File No. SR–Amex–2005–066]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Determination of the National Best Bid or Offer When Another Exchange Is Disconnected From the Intermarket Option Linkage

September 23, 2005.

I. Introduction

On June 17, 2005, the American Stock Exchange LLC (''Amex''), 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 amend Amex Rules 933(g) and 933(g)–ANTE regarding the determination of the National Best Bid or Offer (''NBBO'') when another participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'')[3] is disconnected from the Linkage.[4] On August 4, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 23, 2005.[6] The Commission received one comment letter on the proposal.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Amex proposes to amend Amex Rules 933(g) and 933(g)–ANTE to add a provision regarding the determination of the NBBO when another Participant Exchange[8] is disconnected from the Linkage. Amex Rules 933(g) and 933(g)–ANTE currently provide that a Floor Governor or Exchange Official may determine that certain quotes from another Participant Exchange are not reliable when such other Participant Exchange either (i) declares its quotes non-firm and directly communicates or disseminates a message through Options Price Reporting Authority (OPRA), or (ii) communicates to the Amex that such Participant Exchange is experiencing systems or other problems affecting the reliability of its disseminated quotes.

The Amex proposes to add to Amex Rules 933(g) and 933(g)–ANTE that when another Participant Exchange is disconnected from the Linkage and is not accepting Linkage orders, a Floor Governor or Exchange Official may determine the quotes from such Participant Exchange are unreliable and may exclude such quotes from the Amex's determination of the NBBO. The Amex believes that adding this third circumstance is necessary because there are times when due to system malfunctions, a Participant Exchange is disconnected from the Linkage but has not declared its quotes to be ''non-firm'' and has not informed the other exchanges that the disconnected Participant Exchange may have quote problems. As a result, access to the disconnected Participant Exchange is limited, and the Amex believes such Participant Exchange's quotes should be excluded from the Amex's determination of the NBBO.

III. Comment Received

As noted above, the Commission received one comment letter on the proposal.[9] The commenter was strongly supportive of the Amex's proposed rule change, including the Amex's proposed method of determining that a Participant Exchange's quote is unreliable.[10]

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of the Amex be 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 it is appropriate for the Amex to remove a Participant Exchange's disseminated quote(s) from the Amex's determination of the NBBO when such Participant Exchange is disconnected from Linkage and is not

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the Amex, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. *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., the Pacific Exchange, Inc., 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 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See* Amex Rule 940(b)(9).

[5] Amendment No. 1 superseded and replaced the original filing in its entirety.

[6] *See* Securities Exchange Act Release No. 52270 (August 16, 2005), 70 FR 49335.

[7] *See* letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated August 26, 2005.

[8] A ''Participant Exchange'' is a registered national securities exchange that is a party to the Linkage Plan. *See* Amex Rule 940(b)(14).

[9] *See supra* note 7.

[10] The comment letter also addressed File No. SR–BSE–2005–30, a proposal to allow the Boston Options Exchange (''BOX'') to exclude a Participant Exchange's quotes from BOX's determination of the NBBO when, among other circumstances, such Participant Exchange is disconnected from Linkage. The commenter supported the Boston Stock Exchange, Inc.'s proposal, but suggested a modification to the proposal, as discussed in an order issued separately. *See* Securities Exchange Act Release No. 52501 (September 23, 2005). In addition, the commenter urged the Commission to address issues related to non-firm quotes that are outside the scope of these proposed rule changes.

[11] 15 U.S.C. 78f.

[12] 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).

[13] 15 U.S.C. 78f(b)(5).

accepting Linkage orders because access to such Participant Exchange's quote(s) is limited during such times. The Commission further believes that the Amex's existing rules establish appropriate procedures to notify promptly the affected Participant Exchange and Amex member firms of such removal and establish an appropriate standard for determining when to resume inclusion of the affected Participant Exchange's quote(s) in the Amex's NBBO.[14]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Amex–2005–066), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5326 Filed 9–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52501; File No. SR–BSE–2005–30]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 2 Thereto Relating to the Removal of Unreliable Quotes From the Exchange's Determination of the National Best Bid or Offer

September 23, 2005.

I. Introduction

On July 27, 2005, the Boston Stock Exchange, Inc. (''BSE''), 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 adopt a rule relating to the removal of unreliable quotes from the determination of the national best bid or offer (''NBBO''). The BSE filed Amendment No. 1 to the proposed rule change on August 5, 2005 and withdrew Amendment No. 1 on August 12, 2005. The BSE filed Amendment No. 2 to the proposed rule change on August 12, 2005.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 24, 2005.[4] The Commission received one comment letter on the proposal.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Pursuant to obligations to avoid trade-throughs under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''),[6] the Boston Options Exchange (''BOX''), in general, filters certain orders to either trade on BOX, if the best BOX price is at the NBBO or, if the best BOX price is not at the NBBO, to access the best price for such orders through the intermarket option linkage (''Linkage'').[7]

The BSE is proposing to add subsection (e) of Section 3 of Chapter XII of the BOX Rules to add provisions for declaring an away market's quotes in a particular class of options unreliable and to thereby exclude such quotes from BOX's NBBO determination when an away market: (i) Is disconnected from Linkage; (ii) disseminates non-firm quotes; or (iii) has other confirmed quoting problems. The BSE proposes to exclude unreliable quotes from BOX's NBBO determination, thereby including in BOX's NBBO determination only quotes that are reliable and accessible to investors. The BSE seeks only to exclude an away market's unreliable quotes in a particular option class from BOX's NBBO determination for the time that such quotes remain unreliable.

III. Comment Summary

As noted above, the Commission received one comment letter on the proposal.[8] The commenter supported the proposal and recommended that the Commission approve it. However, the commenter suggested that the BSE modify its proposal to allow the BOX to determine that an away market is disconnected from Linkage without having to get confirmation from the away market that the away market is disconnected. The commenter cited ''the need for immediate action'' as the basis for suggesting that the BSE amend its proposal to allow the BOX to make its determination that a market is disconnected from Linkage without first obtaining confirmation from the away market.[9]

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be 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 it is appropriate for BOX to remove an away market's disseminated quotes from BOX's determination of the NBBO when such quotes are unreliable. The Commission further believes that the proposed rule change establishes reasonable procedures to determine the unreliability of an away market's quotes and to notify promptly the affected away market, and establishes an appropriate standard for determining when to resume inclusion of the

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[14] *See* Amex Rules 933(g) and 933(g)–ANTE.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 added clarifying language and corrected typographical and technical errors.

[4] *See* Securities Exchange Act Release No. 52296 (August 18, 2005), 70 FR 49689.

[5] *See* letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated August 26, 2005 (''Citadel Letter'').

[6] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. *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., the Pacific Exchange, Inc., and the BSE, 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 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[7] *See* subsection (i) of Section 1 of Chapter XII of the BOX Rules.

[8] *See supra* note 5.

[9] The Citadel Letter also addressed File No. SR–Amex–2005–066, a proposal to allow the American Stock Exchange LLC (''Amex'') to exclude an away market's quotes from the Amex's determination of the NBBO when such away market is disconnected from Linkage. The commenter strongly supported Amex's proposal. In addition, the commenter urged the Commission to address issues related to non-firm quotes that are outside the scope of these proposed rule changes.

[10] 15 U.S.C. 78f.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

affected away market's quotes in BOX's NBBO.

The Commission has considered the comments made in the Citadel Letter. The Commission recognizes that the provision in the proposed rule change requiring BOX to contact an away market to confirm that its quotes are unreliable (except in circumstances in which the BOX Market Operations Center received a message from OPRA, the OLA Administrator, or the relevant away market) differs slightly from the rules adopted by the other options exchanges. Nonetheless, the Commission believes that the proposed provision is consistent with the Act.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–2005–30) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5328 Filed 9–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52506; File No. SR–CBOE–2005–58]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Exchange's Preferred Designated Primary Market-Maker Program

September 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing its Preferred Designated Primary Market-Maker (''DPM'') program to allow non-DPM Market-Makers to receive orders designated for a specific Market-Maker (''Preferred orders'').[3] Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 8.13 Preferred Market-Maker Program

(a) Generally. The Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the member transmitting the order that specifies a Market-Maker in that class as the ''Preferred Market-Maker'' for that order. A qualifying recipient of a Preferred Market-Maker order shall be afforded a participation entitlement as set forth in subparagraph (c) below. The Preferred Market-Maker Program shall be in effect until June 2, 2006 on a pilot basis.

(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) The Preferred Market-Maker must have an appointment/allocation in the relevant option class.

(ii) The Preferred Market-Maker must be quoting at the best bid/offer on the Exchange.

(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 in at least 90% of the series of each class for which it receives Preferred Market Maker orders.

(c) Entitlement Rate. Provided the provisions of subparagraph (b) above have been met, the Preferred Market-Maker participation entitlement shall be 40% when there are two or more Market-Makers also quoting at the best bid/offer on the Exchange, and 50% when there is only one other Market-Maker quoting at the best bid/offer on the Exchange. In addition, the following shall apply:

(i) A Preferred Market-Maker may not be allocated a total quantity greater than the quantity that the Preferred Market-Maker is quoting at the best bid/offer on the Exchange.

(ii) The participation entitlement rate is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

(iii) If a Preferred Market-Maker receives a participation entitlement under this Rule, then no other participation entitlements set forth in Exchange Rules (e.g., Rule 8.87 Participation Entitlement of DPMs and e-DPMs and Rule 8.15B Participation Entitlement of LMMs) shall apply to such order.

* * * * *

Rule 6.45A.—Priority and Allocation of Equity Option Trades on the CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to equity option classes designated by the Exchange to be traded on the CBOE Hybrid System and has no applicability to index option and options on ETF classes. The term ''market participant'' as used throughout this rule refers to a Market-Maker, an in-crowd DPM, an e-DPM, a Remote Market-Maker, and a floor broker representing orders in the trading crowd. The term ''in-crowd market participant'' only includes an in-crowd Market-Maker, in-crowd DPM, and floor broker representing orders in the trading crowd.

(a) Allocation of Incoming Electronic Orders: The Exchange shall apply, for each class of options, the following rules of trading priority.

(i) Ultimate Matching Algorithm (''UMA''): Under this method, a market participant who enters a quotation or order and whose quote or order is represented by the disseminated CBOE best bid or offer (''BBO'') shall be eligible to receive allocations of incoming electronic orders for up to the size of its quote or order, in accordance with the principles described below. As an initial matter, if the number of contracts represented in the disseminated quote is less than the

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] With the permission of the CBOE, the Commission made clarifications to the description of the proposed rule change as noted herein. Telephone conversation between David Hsu, Special Counsel, Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Angelo Evangelou, Senior Managing Attorney, CBOE, on August 11, 2005.

number of contracts in an incoming electronic order(s), the incoming electronic order(s) shall only be entitled to receive a number of contracts up to the size of the disseminated quote, in accordance with Rule 6.45A(a)(i)(B). The balance of the electronic order will be eligible to be filled at the refreshed quote either electronically (in accordance with paragraph (a)(i)(B) below) or manually (in accordance with Rule 6.45A(b)) and, as such, may receive a split price execution.

(A) Priority of Orders in the Electronic Book

(1) Public Customer Orders: Public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, a market participant quote, the public customer order(s) shall have priority and, the balance of the incoming order, if any, will be allocated pursuant to Rule 6.45A(a)(i)(B).

(2) Broker-dealer Orders: If pursuant to Rule 7.4(a) the appropriate FPC determines to allow certain types of broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one ''market participant'' regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a ''market participant'' shall be distributed among each broker-dealer order comprising the ''market participant'' pursuant to Rule 6.45A(a)(i)(B).

(B) Allocation

(1) Market Participant Quoting Alone at BBO: When a market participant is quoting alone at the disseminated CBOE BBO and is not subsequently matched in the quote by other market participants prior to execution, it will be entitled to receive incoming electronic order(s) up to the size of its quote. If another market participant joins in the disseminated quote prior to execution of an incoming electronic order(s) such that more than one market participant is quoting at the BBO, incoming electronic order(s) will be distributed in accordance with (B)(2) below.

(2) More than One Market Participant Quoting at BBO: When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to the following allocation algorithm:

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of market participants quoting at the BBO.

Allocation Algorithm

$$\text{Incoming Order Size} \times \left(\frac{\text{(Equal Percentage based on number of market participants quoting at BBO) (Component A)} + \text{(Pro-rata Percentage based on size of market participant quotes) (Component B)}}{2} \right)$$

Component B: Size Prorata Allocation. The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula for equity options, which shall be determined by the appropriate FPC and apply uniformly across all options under its jurisdiction, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: ((Component A Percentage + Component B Percentage)/2) * incoming order size.

(C) [DPM] Participation Entitlement: If a [DPM or e-DPM] *Market-Maker* is eligible for an allocation pursuant to the operation of the Algorithm described in paragraph (a) of Rule 6.45A *and is also eligible for an allocation pursuant to a participation entitlement under Rules 8.13, 8.15B, or 8.87,* the *Market-Maker* [DPM or e-DPM] shall be entitled to receive an allocation (not to exceed the size of *its* [the DPM's or e-DPM's] quote) equal to either:

(1) The greater of the amount the *Market-Maker* [it] would be entitled to pursuant to the participation *entitlement* [right established pursuant to Rule 8.87 (and Regulatory Circulars issued thereunder)] or the amount it would otherwise receive pursuant to the operation of the Algorithm described above provided, however, that in calculating *a* [the] DPM's allocation under the Algorithm, DPMs utilizing more than one membership in the trading crowd where the subject class is traded shall count as two market participants for purposes of Component A of the Algorithm; or

(2) The amount *the Market-Maker* [it] would be entitled to pursuant to the participation *entitlement.* [right established pursuant to Rule 8.87 (and Regulatory Circulars issued thereunder).]

The appropriate FPC shall determine which of the preceding two entitlement formulas will be in effect for all classes under its jurisdiction. All pronouncements regarding the entitlement formula shall be made via Regulatory Circular. The participation entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

(b)–(e) No change.

* * * Interpretations and Policies:

.01–.02. No change.

* * * * *

Rule 6.45B—Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to index options and options on ETFs that have been designated for trading on the CBOE Hybrid System. The term ''market participant'' as used throughout this rule refers to a Market-Maker, a Remote Market-Maker, an in-crowd DPM or LMM, an e-DPM with an appointment in the subject class, and a floor broker representing orders in the trading crowd. The term ''in-crowd market participant'' only includes an in-crowd Market-Maker, in-crowd DPM or LMM, and floor broker representing orders in the trading crowd.

(a) Allocation of Incoming Electronic Orders: The appropriate Exchange

procedures committee will determine to apply, for each class of options, one of the following rules of trading priority described in paragraphs (i) or (ii). The Exchange will issue a Regulatory Circular periodically specifying which priority rules will govern which classes of options any time the appropriate Exchange committee changes the priority.

(i) Price-Time or Pro-Rata Priority

Price-Time Priority: Under this method, resting quotes and orders in the book are prioritized according to price and time. If there are two or more quotes or orders at the best price then priority is afforded among these quotes or orders in the order in which they were received by the Hybrid System; or

Pro-Rata Priority: Under this method, resting quotes and orders in the book are prioritized according to price. If there are two or more quotes or orders at the best price then trades are allocated proportionally according to size (in a pro-rata fashion). The executable quantity is allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If there are two market participants that both are entitled to an additional ½ contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant whose quote or order has time priority.

Additional Priority Overlays Applicable to Price-Time or Pro-Rata Priority Methods

In addition to the base allocation methodologies set forth above, the appropriate Exchange procedures committee may determine to apply, on a class-by-class basis, either or both of the following designated market participant overlay priorities. The Exchange will issue a Regulatory Circular periodically which will specify which classes of options are subject to these additional priorities as well as any time the appropriate Exchange procedures committee changes these priorities.

(1) Public Customer: When this priority overlay is in effect, the highest bid and lowest offer shall have priority except that public customer orders shall have priority over non-public customer orders at the same price. If there are two or more public customer orders for the same options series at the same price, priority shall be afforded to such public customer orders in the sequence in which they are received by the System, even if the Pro-Rata Priority allocation method is the chosen allocation method. For purposes of this Rule, a Public Customer order is an order for an account in which no member, non-member participant in a joint-venture with a member, or non-member broker-dealer (including a foreign broker-dealer) has an interest. (2) Participation Entitlement: The appropriate Exchange procedures committee may determine to grant *Market-Makers* [DPMs, LMMs, or e-DPMs] participation entitlements pursuant to the provisions of Rule 8.87*, Rule 8.13,* or 8.15B. In allocating the participation entitlement, all of the following shall apply:

(A) To be entitled to their participation entitlement, *the Market-Maker's* [a DPM's or LMM's or e-DPM's] order and/or quote must be at the best price on the Exchange.

(B) *The Market-Maker* [A DPM or LMM or e-DPM] may not be allocated a total quantity greater than the quantity that *it* [the DPM or LMM or e-DPM] is quoting (including orders not part of quotes) at that price. If Pro-Rata Priority is in effect, and the *Market-Maker's* [DPM's or LMM's or e-DPM's] allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the *Market-Maker* [DPM or LMM or e-DPM] shall not receive any further allocation of that order.

(C) In establishing the counterparties to a particular trade, the [DPM's or LMM's or e-DPM's] participation entitlement must first be counted against *that Market-Maker's* [the DPM's or LMM's or e-DPM's] highest priority bids or offers. (D) The participation entitlement shall not be in effect unless the Public Customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance.

(ii) Ultimate Matching Algorithm (''UMA''): Under this method, a market participant who enters a quotation and whose quote is represented by the disseminated CBOE best bid or offer (''BBO'') shall be eligible to receive allocations of incoming electronic orders for up to the size of its quote, in accordance with the principles described below. As an initial matter, if the number of contracts represented in the disseminated quote is less than the number of contracts in an incoming electronic order(s), the incoming electronic order(s) shall only be entitled to receive a number of contracts up to the size of the disseminated quote, in accordance with Rule 6.45B(a)(ii)(B). The balance of the electronic order will be eligible to be filled at the refreshed quote either electronically (in accordance with paragraph (a)(ii)(B) below) or manually (in accordance with Rule 6.45B(b)) and, as such, may receive a split price execution.

(A) Priority of Orders in the Electronic Book

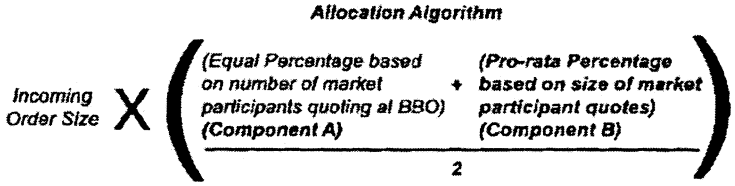
(1) Public Customer Orders: Public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, a market participant quote, the public customer order(s) shall have priority and, the balance of the incoming order, if any, will be allocated pursuant to Rule 6.45B(a)(ii).

(2) Broker-dealer Orders: If pursuant to Rule 7.4(a) the appropriate Exchange procedures committee determines to allow certain types of broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one ''market participant'' regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a ''market participant'' shall be distributed among each broker-dealer order comprising the ''market participant'' pursuant to Rule 6.45B(a)(ii)(B).

(B) Allocation

(1) Market Participant Quoting Alone at BBO: When a market participant is quoting alone at the disseminated CBOE BBO and is not subsequently matched in the quote by other market participants prior to execution, it will be entitled to receive incoming electronic order(s) up to the size of its quote. If another market participant joins in the disseminated quote prior to execution of an incoming electronic order(s) such that more than one market participant is quoting at the BBO, incoming electronic order(s) will be distributed in accordance with (B)(2) below.

(2) More than One Market Participant Quoting at BBO: When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to the following allocation algorithm:



Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of market participants quoting at the BBO.

Component B: Size Pro-rata Allocation. The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula, which shall be established by the appropriate Exchange procedures committee and may vary by product, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Changes made to the percentage weightings of Components A and B shall be announced to the membership via Regulatory Circular at least one day before implementation of the change.

(C) Participation Entitlement: If a *Market-Maker* [DPM, LMM, or e-DPM] is eligible for an allocation pursuant to the operation of the Algorithm described in paragraph (a) of Rule 6.45B *and is also eligible for an allocation pursuant to a participation entitlement under Rules 8.13, 8.15B, or 8.87,* the *Market-Maker* [DPM, LMM, or e-DPM] may be entitled to receive an allocation (not to exceed the size of its quote) equal to either:

(1) The greater of the amount it would be entitled to pursuant to the participation *entitlement* [right established pursuant to Rule 8.87 or 8.15B (and Regulatory Circulars issued thereunder)] or the amount it would otherwise receive pursuant to the operation of the Algorithm described above provided, however, that in calculating a [the] DPM's or LMM's allocation under the Algorithm, DPMs or LMMs utilizing more than one membership in the trading crowd where the subject class is traded shall count as two market participants for purposes of Component A of the Algorithm; or

(2) The amount it would be entitled to pursuant to the participation *entitlement* [right established pursuant to Rule 8.87 or 8.15B (and Regulatory Circulars issued thereunder)]; or

(3) The amount it would be entitled to receive pursuant to the operation of the Algorithm described above provided, however, that in calculating a [the] DPM's or LMM's allocation under the Algorithm, DPMs or LMMs utilizing more than one membership in the trading crowd where the subject class is traded shall count as two market participants for purposes of Component A of the Algorithm.

The appropriate Exchange procedures committee shall determine which of the preceding three entitlement formulas will be in effect on a class-by-class basis. All pronouncements regarding the entitlement formula shall be made via Regulatory Circular. The participation entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

(b)–(d) No change.

* * * Interpretations and Policies:

.01–.02. No change.

* * * * *

Rule 8.15B Participation Entitlement of LMMs

(a) The appropriate Market Performance Committee may establish, on a class-by-class basis, a participation entitlement formula that is applicable to LMMs.

(b) To be entitled to a participation entitlement, the LMM must be quoting at the best bid/offer on the Exchange and the LMM may not be allocated a total quantity greater than the quantity for which the LMM is quoting at the best bid/offer on the Exchange. The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied. *The participation entitlement set forth in this Rule shall not apply in instances where a Preferred Market-Maker receives a participation entitlement pursuant to Rule 8.13.*

(c) The LMM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. If more than one LMM is entitled to a participation entitlement, such entitlement shall be distributed equally among all eligible LMMs provided, however, that an LMM may not be allocated a total quantity greater than the quantity for which the LMM is quoting at the best bid/offer on the Exchange.

The appropriate Market Performance Committee may determine, on a class-by-class basis, to decrease the LMM participation entitlement percentages from the percentages specified in paragraph (c). Such changes will be announced to the membership in advance of implementation via Regulatory Circular.

* * * * *

Rule 8.87. Participation Entitlement of DPMs and e-DPMs

(a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) The participation entitlement for DPMs and e-DPMs (as defined in Rule 8.92) shall operate as follows:

(1) Generally.

(i) To be entitled to a participation entitlement, the DPM/e-DPM must be quoting at the best bid/offer on the Exchange.

(ii) A DPM/e-DPM may not be allocated a total quantity greater than the quantity that the DPM/e-DPM is quoting at the best bid/offer on the Exchange.

(iii) The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

(2) Participation Rates applicable to DPM Complex. The collective DPM/e-DPM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

(3) Allocation of Participation Entitlement Between DPMs and e-DPMs. The participation entitlement

shall be as follows: If the DPM and one or more e-DPMs are quoting at the best bid/offer on the Exchange, the e-DPM participation entitlement shall be one-half (50%) of the total DPM/e-DPM entitlement and shall be divided equally by the number of e-DPMs quoting at the best bid/offer on the Exchange. The remaining half shall be allocated to the DPM. If the DPM is not quoting at the best bid/offer on the Exchange and one or more e-DPMs are quoting at the best bid/offer on the Exchange, then the e-DPMs shall be allocated the entire participation entitlement (divided equally between them). If no e-DPMs are quoting at the best bid/offer on the Exchange and the DPM is quoting at the best bid/offer on the Exchange, then the DPM shall be allocated the entire participation entitlement. If only the DPM and/or e-DPMs are quoting at the best bid/offer on the Exchange (with no Market-Makers at that price), the participation entitlement shall not be applicable and the allocation procedures under Rule 6.45A shall apply.

(4) [Allocation of] Participation Entitlement *In Instances Where a Preferred Market-Maker Receives a Participation Entitlement Pursuant to Rule 8.13.*

The participation entitlement set forth in this Rule shall not apply in instances where a Preferred Market-Maker receives a participation entitlement pursuant to Rule 8.13. [Between DPMs and e-DPMs for Orders Specifying a Preferred DPM. Notwithstanding the provisions of subparagraph (b)(3) above, the Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the member transmitting the order that specifies a DPM or e-DPM in that class as the ''Preferred DPM'' for that order.

In such cases and after the provisions of subparagraph (b)(1)(i) and (iii) above have been met, then the Preferred DPM participation entitlement shall be 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; and 40% when there are two or more Market-Makers also quoting at the best bid/offer on the Exchange, subject to the following:

(i) If the Preferred DPM is not quoting at the best bid/offer on the Exchange then the participation entitlement set forth in subparagraph (b)(3) above shall apply;

(ii) In no case shall the Preferred DPM be allocated, pursuant to this participation right, a total quantity greater than the quantity that the Preferred DPM is quoting at the best bid/offer on the Exchange.

The Preferred DPM participation entitlement set forth in subparagraph (b)(4) of this Rule shall be in effect until June 2, 2006 on a pilot basis.]

* * * Interpretations and Policies:

.01 No change.

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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. 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

CBOE Rule 8.87 governs the application of the Exchange's recently approved Preferred DPM Program.[4] Under the program, order providers can send an order to the Exchange designating a ''Preferred DPM'' from among the DPM Complex.[5] If the Preferred DPM is quoting at the national best bid or offer (''NBBO'') at the time the order is received on CBOE, the Preferred DPM, after public customer orders at the best bid/offer on the Exchange are filled, is entitled to a 40% allocation of the order when there are two or more Market-Makers also quoting at the best bid/offer on the Exchange, and 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange.[6]

The Philadelphia Stock Exchange (''Phlx'') recently obtained approval of a Directed Order Program that allows a recipient of a directed order on the Phlx to receive a 40% participation entitlement on designated orders received while that entity is quoting at the NBBO.[7] The International Securities Exchange (''ISE'') also recently obtained approval to implement a preferencing program that allows a preferenced ISE market maker to receive a 40% participation entitlement on designated orders received while that market maker is quoting at the NBBO.[8] Unlike CBOE's program, these exchanges allow any non-specialist market maker to receive ''preferred'' orders, provided such market maker is fulfilling certain heightened quoting obligations. The purpose of this filing is to expand CBOE's Preferred DPM Program to allow any CBOE Market-Maker to receive Preferred orders.

The Exchange proposes to accomplish this by renaming the program the ''Preferred Market-Maker Program'' and creating new CBOE Rule 8.13 to govern the program. That rule is virtually identical to the portion of CBOE Rule 8.87 that pertains to the Preferred DPM Program (which would be deleted), except that the new rule (i) Would expand the program to non-DPM Market-Makers (including Remote Market-Makers and Lead Market-Makers), (ii) would provide that a Market-Maker would be required to have an appointment in a class in order to receive Preferred orders in that class, (iii) would provide that, to receive a Preferred order, a Market-Maker would be required to provide continuous two-sided quotations in at least 90% of the series of each class for which it receives Preferred Market Maker orders; and (iv) would provide that, if a participation entitlement is provided under CBOE Rule 8.13, no other participation entitlement under any other rule would apply. Provisions also would be added to the rules establishing participation entitlements for DPMs and LMMs (CBOE Rule 8.87 and CBOE Rule 8.15B) to expressly provide that participation entitlements under those rules would not apply in instances where a participation entitlement is granted pursuant to new CBOE Rule 8.13. Lastly, changes are proposed to CBOE's Hybrid order allocation rules (CBOE Rule 6.45A for equity options and CBOE Rule 6.45B for index options) to provide that Market-Makers receiving a Preferred participation entitlement pursuant to CBOE Rule 8.13 may be

[4] Securities Exchange Act Release No. 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (order approving File No. SR–CBOE–2004–71). A modification to the applicable participation entitlement percentages under the program was also recently effected. *See* Securities Exchange Act Release No. 51824 (June 10, 2005), 70 FR 35476 (June 20, 2005) (notice of filing and immediate effectiveness of File No. SR–CBOE–2005–45). *See also* Securities Exchange Act Release No. 52021 (July 13, 2005), 70 FR 41462 (July 19, 2005) (notice of filing and order granting accelerated approval to File No. SR–CBOE–2005–50).

[5] The DPM Complex consists of the DPM and electronic DPMs in the class. *See supra* note 3.

[6] *Id.*

[7] Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (order approving File No. SR–Phlx–2004–91).

[8] Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (order approving File No. SR–ISE–2005–18).

allocated the greater of such entitlement or the quantity that the Market-Maker would receive under the applicable matching algorithm of the order allocation rule in effect. The matching algorithm rules already contain such language for DPMs; the language now would merely be expanded to include any Preferred Market-Maker.

The Exchange notes that the Preferred DPM program is operating as a one-year pilot program.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] 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 CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the 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 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 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–2005–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–58. 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 the 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–2005–58 and should be submitted on or before October 21, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of 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.[11] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] 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 notes that the Preferred DPM Program currently operates on a pilot basis.[13] The proposal would expand the Preferred DPM Program to allow any non-DPM Market-Maker to receive Preferred orders in a class. The Commission notes that a non-DPM Market-Maker: (i) Must have an appointment in a class; (ii) must provide continuous two-sided quotations in at least 90% of the series of that class; and (iii) must be quoting at the best bid/offer on the Exchange (which would be the NBBO) in order to receive a participation entitlement in that class under the Preferred Market-Maker Program. In addition, the Commission notes that it has approved similar preferencing programs on other options exchanges.[14] Furthermore, the Commission notes that the Exchange represented that it will proactively conduct surveillance for, and enforce against, coordinated actions between a Market-Maker and an order entry firm.[15]

The 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 believes that granting accelerated approval of the proposal should allow the CBOE to immediately implement its Preferred Market-Maker Program. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change 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,[17] that the proposed rule change (SR–CBOE–2005–58) be, and hereby is, approved on an accelerated basis, for a pilot period to expire on June 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5324 Filed 9–29–05; 8:45 am]

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 4.

[14] *See supra* notes 7 and 8.

[15] *See* letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to John Roeser, Assistant Director, Division of Market Regulation, Commission, dated September 19, 2005.

[16] 15 U.S.C. 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52508; File No. SR–NASD–2005–089]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 4 Thereto, Relating to NASD's Direct Authority for the Activities Related to or in Support of Trading in Over-the-Counter Equity Securities

September 26, 2005.

I. Introduction

On July 19, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD's Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries (''Delegation Plan'') and certain NASD rules to reflect the NASD's direct authority for the activities related to or in support of trading in over-the-counter (''OTC'') equity securities,[3] including, but not limited to, the OTC Bulletin Board (''OTCBB''). Currently, this authority is delegated to The Nasdaq Stock Market, Inc. (''Nasdaq''). On July 22, 2005, the NASD filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 29, 2005.[5]

The Commission received two comment letters in response to the proposal.[6] On September 13, 2005, the NASD filed Amendment No. 2 to the proposed rule change.[7] On September 23, 2005, the NASD filed Amendment Nos. 3 and 4 to the proposed rule change.[8] The amended rule text set forth in Amendment No. 2 and the text of Amendment Nos. 3 and 4 are available on the NASD's Web site (*http://www.nasd.com*), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

This order approves the proposed rule change, as amended. In addition, the Commission provides notice of filing of Amendment Nos. 2, 3, and 4, grants accelerated approval to Amendment Nos. 2, 3, and 4, and solicits comments from interested persons on Amendment Nos. 2, 3, and 4.

II. Description of the Proposal

Pursuant to the Delegation Plan, activities related to or in support of the trading in OTC equity securities, including, but not limited to, operation of the OTCBB [9] (collectively, ''OTC equity operations''), have been delegated from the NASD to Nasdaq. In this context, OTC equity operations include services such as trade reporting, comparison, quote collection and dissemination, as applicable, and the related rulemaking functions in this area.

Under the proposal to amend the Delegation Plan, the NASD would assume direct authority for OTC equity operations rather than delegate this authority to Nasdaq. In addition, the NASD would delegate to NASD Regulation, Inc. (''NASDR'') the rulemaking authority relating to trading practices for OTC equity securities. The NASD intends, however, to contract with Nasdaq to have it continue to provide certain operational systems and support, OTCBB quotation and trade reporting platform and certain other services that Nasdaq currently provides with respect to OTC equity operations.

The NASD also proposes to: (1) Amend NASD Rule 6545 to transfer trading and quotation halt authority for OTCBB-eligible securities from Nasdaq to the NASD; (2) amend NASD Rule 11890 to transfer from Nasdaq to the NASD the ability to nullify or modify a transaction in an OTC equity security in certain circumstances; (3) amend NASD Rule 11890 to incorporate revisions to that rule that were approved by the Commission shortly before publication of the Notice and to clarify the time frame for action by NASD or Nasdaq officials to nullify or adjust the terms of a trade under paragraph (b) of NASD Rule 11890; [10] (4) amend NASD Rule 6620(f) to conform the portion of the rule governing reporting of cancelled trades to reflect the proposed changes to NASD Rule 11890; and (5) amend NASD Rule 7010(p)(3) to transfer the authority to set certain fees for historical research reports for OTCBB-eligible securities from Nasdaq to the NASD.

The NASD intends that the proposed rule change, as amended, will become effective on October 1, 2005, pending Commission approval prior to that date.

III. Summary of Comments and the NASD's Response

The Commission received two comment letters relating to the NASD's proposed rule change as modified by Amendment No. 1.[11] The Pink Sheets Letter and STANY Letter supported the NASD's proposed rule change.

The Pink Sheets Letter further suggested that the Nasdaq Quotation Dissemination Service (''Service'') disseminate real-time trade and volume data for non-Nasdaq American Depositary Receipts (''ADRs'') that are traded in the over-the-counter market, which currently are disseminated at the end of the trading day. In addition, the Pink Sheets Letter stated that the Service should disseminate real-time trade and volume data for odd-lot transactions in all OTC equity securities

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''OTC equity securities'' herein refers to OTC Equity Securities as defined in NASD Rule 6610, including, but not limited to, OTC Bulletin Board securities.

[4] Amendment No. 1, which replaced and superceded the original filing in its entirety, revised NASD Rule 11890 to transfer the authority to nullify or modify transactions in OTC equity securities under certain circumstances to the NASD; made conforming changes to Interpretive Material (''IM'') 11890–1 and 11890–2; revised NASD Rule 6620 in light of the changes to NASD Rule 11890 contained in Amendment No. 1; and made several minor and technical changes to the filing.

[5] *See* Securities Exchange Act Release No. 52119 (July 25, 2005), 70 FR 43918 (''Notice'').

[6] *See* Letter from R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC, to Jonathan G. Katz, Secretary, Commission, dated August 31, 2005 (''Pink Sheets Letter''), and Letter from William A. Vance, President and Kimberly Unger, Executive Director, The Security Traders Association of New York, Inc., to Jonathan G. Katz, Secretary, Commission, dated September 19, 2005 (''STANY Letter'').

[7] In Amendment No. 2, the NASD revised the text of NASD Rule 11890 and IM–11890–2 to reflect amendments to those provisions that were approved by the Commission shortly before publication of the Notice. *See* Securities Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005) (SR–NASD–2004–009). These recent revisions to NASD Rule 11890 and IM–11890–2 do not affect the substance of the instant proposed rule change. In addition, Amendment No. 2 changed the effective date of the proposed rule change from September 1, 2005 to October 1, 2005, and proposed amendments to NASD Rule 11890(b)(1) and (2) to clarify the time frame for action by Nasdaq or NASD officials under those paragraphs of NASD's clearly erroneous rule.

[8] In Amendment No. 3, the NASD made a non-substantive change to Exhibit 4 that was included in Amendment No. 2 to reflect changes to the text of NASD Rule 11890 submitted in Amendment No. 2. The NASD subsequently filed Amendment No. 4 to make a non-substantive edit to the formatting of the text of IM–11890–2.

[9] The OTCBB provides an electronic quotation medium for subscribing members to enter, update, and display quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer, an unpriced indication of interest, or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. The OTCBB is not an issuer listing service and therefore does not maintain a relationship with quoted issuers or impose quantitative listing standards as do Nasdaq and the exchanges. To be eligible for quotation on the OTCBB, issuers must be current in their filings with the Commission or applicable regulatory authority.

[10] *See* Amendment No. 2, *supra* note 7.

[11] *See* Pink Sheets Letter and STANY Letter, *supra* note 6.

that are sold for a price greater than $200 per share. The Pink Sheets Letter noted that the Service currently disseminates such information for securities that are quoted on the OTCBB, but not for other OTC equity securities.

The STANY Letter shared the views presented in the Pink Sheets Letter relating to the dissemination of trade and volume data for OTC equity securities. Specifically, the STANY Letter stated that it believed that no valid reason existed for Nasdaq to distinguish between the data it disseminates for domestic OTC equity securities and ADRs traded in the over-the-counter market, and that Nasdaq should disseminate real-time trade and volume data for odd-lot transactions in OTC equity securities, including Pink Sheets securities, that are sold for a price greater than $200 per share.

The Pink Sheets Letter also recommended that the NASD prepare a Notice to Members to remind broker-dealers about their obligation not to participate in unlawful securities distributions. Further, the Pink Sheets Letter recommended that NASDR review this issue with a view to proposing rules that would preclude the participation of broker-dealers in unlawful distributions of securities by their customers. In addition, the Pink Sheets Letter advocated extending trade halt authority under NASD Rule 6545 to all OTC equity securities, rather than limiting it to OTCBB-eligible securities, and to extend the authority to situations where fraudulent or manipulative acts are strongly suspected, rather than relying on actions by other markets. Further, the Pink Sheets Letter suggested limiting such trade halt authority to four days so that ''piggyback'' eligibility under Rule 15c2–11 under the Act [12] is not affected. Finally, the Pink Sheets Letter recommended that the NASD's authority to cancel clearly erroneous trades pursuant to NASD Rule 11890 should extend until the settlement date for the transactions in question.

In Amendment No. 2, the NASD noted that because the recommendations in the Pink Sheets Letter are outside the scope of the proposed rule change, it is not specifically responding to those recommendations in the context of the proposed rule change. The NASD, however, indicated that it will review and analyze the recommendations set forth in the Pink Sheets Letter in the same manner in which it would consider any requests for rulemaking, and, based on such review and analysis, will determine whether further action on those recommendations is appropriate.[13]

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that NASD rules must 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.[15]

Under the proposal, the NASD will assume direct authority for OTC equity operations that it previously had delegated to Nasdaq. The NASD represents that, pursuant to a contractual arrangement with Nasdaq, Nasdaq will continue to provide certain operational systems and support, including the OTCBB quotation and trade reporting platform and certain other services that Nasdaq currently provides with respect to OTC equity operations. In addition, the NASD proposes to delegate to NASDR the authority to develop and adopt rule changes to establish trading practices with respect to OTC equity securities. The Commission believes that the proposal by the NASD to assume direct responsibility for OTC equity operations, including operation of the OTCBB, and to delegate to NASDR the authority to develop and adopt rule changes to establish trading practices with respect to OTC equity securities is consistent with the Act. In the Commission's view, since the NASD is the self-regulatory organization with authority over and responsibility for the oversight of the OTC equity market, it is reasonable for the NASD to revise its Delegation Plan to assume direct authority for OTC equity operations and to delegate to NASDR rulemaking authority for trading practices involving OTC equity securities.

In addition, the proposal would amend NASD Rule 11890 to grant the NASD direct authority to determine, on its own motion, whether certain transactions in OTC equity securities should be modified or nullified in the event of a disruption or malfunction of any NASD quotation, communication, or trade reporting system or in the event of extraordinary market conditions in which nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. The proposal also provides a process by which a determination under NASD Rule 11890 could be appealed to the Uniform Practice Code (''UPC'') Committee, unless the Executive Vice President who makes the initial determination specifies at that time that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. The Commission believes that the assumption of direct authority by the NASD to nullify or modify the terms of trades in OTC equity securities under certain conditions is appropriate and should help clarify for OTC equity market participants the NASD's authority to nullify or modify the terms of clearly erroneous transactions in OTC equity securities.

The proposal would amend certain other rules, including NASD Rule 6620(f) and NASD Rule 7010(p)(3), to reflect the transfer of authority from Nasdaq to the NASD with respect to the reporting of trades cancelled pursuant to NASD Rule 11890 and the authority to set fees for historical research reports for OTCBB-eligible securities, respectively. The Commission believes that these changes are appropriate to conform the applicable rule text to reflect the assumption of direct responsibility for OTC equity securities by the NASD.

The Commission finds good cause for approving Amendment Nos. 2, 3, and 4 to the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission notes that Amendment No. 2 is a non-substantive amendment to revise the effective date of the proposed rule change; to reflect changes to NASD Rule 11890 and IM–11890–2 that were approved by the Commission shortly before publication of the Notice; and to clarify the timeframe for NASD or Nasdaq officials to act on their own motion to nullify or modify the terms of a trade under NASD Rule 11890. Further, Amendment No. 3 is a non-substantive amendment to revise Exhibit 4 contained in Amendment No. 2 to reflect the changes to the text of NASD Rule 11890 submitted in

[12] 17 CFR 240.15c2–11.

[13] The Commission notes that the NASD did not respond to the STANY Letter because it was submitted after the NASD had filed Amendment No. 2. As noted above, the STANY Letter adopted the views of the Pink Sheets Letter with respect to the dissemination of trade and volume data for OTC equity securities.

[14] 15 U.S.C. 78o–3(b)(6).

[15] In approving this proposed rule change, as amended, 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).

Amendment No. 2, and Amendment No. 4 is a non-substantive amendment to IM–11890–2. The Commission therefore believes that it is appropriate to accelerate approval of Amendment Nos. 2, 3, and 4 so that the proposed rule change, as amended, may be implemented in full without delay.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2, 3, and 4 to the proposed rule change, as amended, are 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–2005–089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–089. 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 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–2005–089 and should be submitted on or before October 21, 2005.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2005–089), as amended, be, and it hereby is, approved, and Amendment Nos. 2, 3, and 4 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5334 Filed 9–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52502; File No. SR–PCX–2005–19]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed New Listing Fees

September 23, 2005.

I. Introduction

On February 28, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc., 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 increase certain portions of its listing fees and to make a number of related modifications. On June 15, 2005, PCX amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 16, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

PCX is proposing to amend its Schedule of Fees and Charges, as follows: (1) Implement new initial listing fees specifically for common stock issued in initial public offerings and listed exclusively by PCX for trading on the Archipelago Exchange (''ArcaEx''), a facility of PCX, and make related modifications to the initial listing fees; (2) exempt from initial listing fees already-public issues which are listed and/or quoted on other marketplaces, whether or not dually listed; (3) exempt from annual maintenance fees transfer listings for the first 12 calendar months after listing, whether or not dually listed; (4) revise the annual maintenance fees; and (5) revise the additional shares listing fees.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act [4] and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires, among other things, that an exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using its facilities. The Commission notes that the Exchange does not believe that the proposed listing fee changes, including the proposed exemptions from certain listing fees, would negatively impact the Exchange's regulatory program. Further, the Commission notes that PCX has committed extensive resources to its listings program since the ArcaEx began operating as a facility of PCX. Finally, the Commission believes that the proposal might also serve to enhance competition among listing markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–2005–19), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5327 Filed 9–29–05; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(2).

[17] 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. 52225 (August 8, 2005), 70 FR 48224.

[4] 15 U.S.C. 78f(b).

[5] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5197]

Culturally Significant Objects Imported for Exhibition Determinations: ''Darwin''

AGENCY: Department of State.

ACTION: Notice.

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 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''Darwin,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, New York, from on or about November 15, 2005, to on or about May 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, such as a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 26, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–19643 Filed 9–29–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5196]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR Parts 120 to 130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act (''AECA'') (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to persons, or any party to the export, who have been convicted of violating certain statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary for Political-Military Affairs is authorized by Section 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or other approval is required. This prohibition is referred to as ''statutory debarment.''

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment proceedings outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. It should be noted, however, that unless licensing privileges are reinstated, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director of Defense Trade Controls Compliance for reinstatement beginning one year after the date of the debarment, in accordance with Section 38(g)(4) of the AECA and Section 127.11(b) of the ITAR. Any decision to grant reinstatement can be made only after the statutory requirements under Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-base basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38 of the AECA and Section 127.7 of the ITAR, the Assistant Secretary of State for Political-Military Affairs has statutorily debarred the following persons for a period of three years following the date of their AECA conviction:

(1) Equipment & Supply, Inc., August 6, 2004, U.S. District Court, Eastern District of Wisconsin (Milwaukee), Case #02–Cr–262.

(2) Klaus Ernst Buhler, June 21, 2003, U.S. District Court, Middle District of Florida (Jacksonville), Case #: 3:02–Cr–13–J–12TEM.

(3) Rotair Industries, Inc., July 29, 2004, U.S. District Court, District of Connecticut (New Haven), Case #: 3:04Cr 149 JBA.

As noted above, at the end of the three-year period, the above named persons/entities remain debarred unless licensing privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.*, sections 120.1(c) and (d), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for

reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d) and 128.13(a).

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: September 22, 2005.

Rose M. Likins,

Acting Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. 05–19642 Filed 9–29–05; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5167]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State announces the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP) to be held on Thursday, October 20, 2005, from 2 p.m. to 4:30 p.m., in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Vice Chair Mr. Rhett Dawson of the Information Technology Industry Council. Ambassador David A. Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, and other senior State Department and U.S. Government officials will also address the meeting. The main focus of the event will be to discuss U.S.-India relations, with an emphasis on industry input for the first meeting of the newly-formed U.S.-India Information and Communications Technologies Working Group. State Department officials will also present a status report on preparations for the second phase of the World Summit on the Information Society, which will take place in Tunis, Tunisia from November 16–18, 2005.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, organization, social security number, date of birth, and citizenship to Robert M. Watts at *wattsrm@state.gov* no later than 5 p.m. on Tuesday, October 18, 2005. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Robert M. Watts, Executive Secretary of the Committee, at 202–647–5820 or by e-mail at *wattsrm@state.gov.*

Dated: September 23, 2005.

Robert M. Watts,

Executive Secretary, ACICIP, Department of State.

[FR Doc. 05–19641 Filed 9–29–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Minimum Slot Usage Requirement

ACTION: Notice of denial of request for waiver of the minimum slot usage requirement.

SUMMARY: The FAA recently issued a letter responding to a request from the Regional Airlines Association (RAA) for a blanket waiver of the minimum slot usage requirement for all slots at the three High Density Traffic Airports. The text of that letter is set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Senior Attorney, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION: Deborah C. McElroy, President, Regional Airline Association, 2025 M Street, NW., Suite 800, Washington, DC 20036–3309.

Dear Ms. McElroy: This is in response to your September 9 letter, submitted on behalf of the Regional Airline Association's (RAA) membership, requesting a waiver of the ''use or lose'' requirements for slots and slot exemptions held by RAA members at John F. Kennedy International (JFK), LaGuardia (LGA) and Ronald Reagan Washington National Airports (DCA) for the period August 29, 2005 through March 29, 2006.

Section 93.227, subsection (j) of Title 14 of the Code of Federal Regulations provides that the Chief Counsel of the FAA may waive the usage requirements of paragraph (a) of that section in the case of ''a highly unusual and unpredictable condition which is beyond the control of the slot-holder and which exists for a period of 9 or more days.'' As an example, of such a condition, subsection 93.227(j) gives, ''weather conditions which request in the restricted operation of an airport for an extended period of time.''

RRA points to factors beyond the carriers' control—including record fuel costs, potential disruptions in fuel supplies, airport closing and major changes in travel patterns—that are creating economic difficulties for airlines of the like that have not been experienced since the aftermath of September 11 or the Gulf War. Your petition further states that the carriers' inability to raise fares to recoup higher fuel costs will necessitate schedule changes, which will result in either utilization of slots below the 80% minimum specified in our regulations or the operation of flights solely to preserve slot holdings. Additionally, you note that recent challenges to fuel supplies and further increases in fuel costs due to the impact of Hurricane Katrina have critically exacerbated the situation.

Your association requests a waiver on behalf of its members for usage

requirements on all slots and slot exemptions at JFK, LGA, and DCA beginning with the initial period following the hurricane through the winter scheduling season.

This office received comments on your petition from JetBlue Airways Corp. and US Airways, Inc. JetBlue opposes the requested waiver principally on the ground that the request is ''overly broad'' because the proposed waiver would affect slots beyond those needed to serve airports directly impacted by Hurricane Katrina, such as New Orleans (MSY). JetBlue would support a more limited waiver concerning flights between such airports, and the slot-controlled airports. According to JetBlue, RAA has not make and adequate demonstration of need for a broader wavier, given the existing demand by JetBlue and others for scarce take-off and landing rights at DCA and LGA. JetBlue argues that underutilized slots should be returned to the FAA for redistribution under Part 93.

US Airways supports the RAA petition and requests its own (identical) relief, specifically, a waiver of the slot usage requirements for all operable slots and slot exemptions at DCA and LGA through March 2006. US Airways recites many of the same facts described in the RAA petition, emphasizing actual and potential disruptions in the nation's refining capacity, which drive up fuel costs. US Airways states that a waiver would give it ''scheduling and operational flexibility * * * to rationalize its services as much as possible'' in light of Katrina and related events. The carrier also points out that a variety of other federal agencies (such as EPA, the Department of Energy, and IRS) have waived various regulatory requirements to facilitate hurricane relief and recovery efforts.

On September 19, 2005 we granted a request from American Airlines, Inc. to waive the slot usage requirements with respect to four specifically identified slots that the carrier was scheduled to use from September 1 through December 31, 2005 for flights from LGA to MSY. We noted that this requested waiver satisfied the criteria listed in section 93.227(j).

We are receptive to specific requests for short-term waivers from the slot usage requirements, *i.e.*, with respect to service from any slot-controlled airport to/from airports affected by the recent hurricanes. We recognize that slot holders may well have difficulty meeting the rule's usage requirements when the extraordinary and devastating effects of the hurricane have interfered with their ability to sustain service in that region.

The FAA stands ready to work with the affected carriers and their trade associations to address such situations. (Of course, if carriers are expecting to cancel operations for some or all of the winter season, please advise our slot program office as soon as possible since other carriers might be interested in utilizing the slots on a temporary basis, thus avoiding their potential withdrawal under the ''use or lose'' rule.)

Because, however, many of the circumstances cited in your petition go to longstanding and fundamental obstacles to airline profitability, and are not specific to Katrina, I do not find that the criteria in section 93.227(j) have been satisfied. Therefore, I am denying your petition but without prejudice to your renewing your request on a more specific, limited basis.

If you have further questions on this matter, please contact Lorelei Peter on my staff at 202–267–3134.

Sincerely,

Andrew B. Steinberg,
Chief Counsel.

Issued in Washington, DC, on September 23, 2005.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

[FR Doc. 05–19600 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Laredo International Airport, Laredo, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Laredo for Laredo International Airport under the provisions of 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Blackford, Federal Aviation Administration, Airports Division, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298, telephone (817) 222–5607.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted by the City of Laredo, Texas for Laredo International Airport are in compliance with applicable requirements of Part 150, effective September 22, 2005. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Laredo. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes the following from the August 2005, FAR Part 150 Noise Compatibility Study: Exhibit 4.5, Year 2005 Existing Condition Noise Exposure Map; Exhibit 5.2, Year 2010 Future Condition Noise Exposure Map; Appendix J maps consisting of Touch And Go/Overflight Flight Tracks Map, Departure Flight Tracks Map, and Arrival Flight Tracks Map; Table 4.4, 2005 Existing Condition Noise Exposure Estimates; Table 5.2, 2010 Future Condition-Case 1 Noise Exposure Estimates. There are no Historic Resources within the DNL 65 contour. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on September 22, 2005.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the

implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; Laredo International Airport, 5210 Bob Bullock Loop, Laredo, Texas 78041. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, September 22, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–19596 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Lafayette Regional Airport, Lafayette, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA is issuing this notice to advise the public that the FAA's Record of Decision (ROD), resulting from an Environmental Impact Statement (EIS) prepared by the Federal Highway Administration (FHWA) for its I–49 Connector Highway Project (State Project No. 700–24–0073 and Federal Aid Project No. DE–0009 (802) through Lafeyette, Louisiana.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Environmental Specialist, ASW–640D, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193–0640. Telephone (817) 222–5640.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD addressing impacts to the Lafayette Regional Airport resulting from the FHWA's selected alternative for its I–49 Connector Highway project at Lafayette, Louisiana. The ROD documents the final Agency decisions regarding the proposed project's impact upon Lafayette Regional Airport as described and analyzed in the EIS. The ROD is available for review during normal business hours at the following locations: FAA Southwest Regional Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298 and at the Lafayette Regional Airport, 200 Terminal Drive, #200, Lafayette, LA 70508.

Issued on: September 23, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–19597 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Monday, October 3, 2005 from 1 p.m. to 4:30 p.m., Tuesday, October 4, 2005, from 9 a.m. to 4:30 p.m., and Wednesday, October 5, 2005, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen P. Creamer, Executive Director, ATPAC, System Operations and Safety, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Monday, October 3, 2005 from 1 p.m. to 4:30 p.m., Tuesday, October 4, 2005, from 9 a.m. to 4:30 p.m., and Wednesday, October 5, 2005, from 9 a.m. to 12 p.m.

The agenda for this meeting will cover: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.

2. Submission and Discussion of Areas of Concern.

3. Discussion of Potential Safety Items.

4. Report from Executive Director.

5. Items of Interest.

6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than September 28, 2005. The next quarterly meeting of the FAA ATPAC is planned to be held from January 23–26, 2006, in San Diego, CA.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 15, 2005.

Stephen Creamer,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 05–19599 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–22194]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes FMCSA's receipt of applications from 49 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before October 31, 2005.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2005–21254.

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 49 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

Francis M. Anzulewicz

Mr. Anzulewicz, 54, has had macular degeneration in his right eye since 1999. The best-corrected visual acuity in his right eye is 20/60 and in the left, 20/20. His optometrist examined him in 2004 and noted, ''In my opinion, Francis Anzulewicz has sufficient vision to perform the driving tasks required for commercial vehicles.'' Mr. Anzulewicz reported that he has driven straight trucks for 27 years, accumulating 540,000 miles. He holds a Class B CDL with a motorcycle endorsement from Connecticut. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

James S. Ayers

Mr. Ayers, 45, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/30. His ophthalmologist examined him in 2004 and noted, ''In my opinion, you would appear to have sufficient vision to allow you to drive a light commercial vehicle.'' Mr. Ayers reported that he has driven straight trucks for 14 years, accumulating 36,000 miles. He holds a Class C CDL with a motorcycle endorsement from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Bruce Barrett

Mr. Barrett, 59, has amblyopia in his left eye since age 3. His visual acuity in the right eye is 20/25 and in the left, light perception. Following an examination in 2005, his optometrist noted, ''Mr. Barrett has sufficient visual function to continue to perform the driving tasks required to safely operate a commercial vehicle.'' Mr. Barrett reported that he has driven straight trucks for 38 years, accumulating 1.0 million miles. He holds a Class B CDL from West Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Norm Braden

Mr. Braden, 59, has a prosthetic right eye due to an injury he obtained in 1965. His visual acuity in the left eye is 20/20. Following an examination in 2005, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Braden reported that he has driven straight trucks for 18 years, accumulating 450,000 miles, and tractor-trailer combinations for 18 years, accumulating 180,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows one crash and no convictions for a moving violation in a CMV. According to the police report, as Mr. Braden attempted to make a right hand turn, the trailer struck a stop sign. Mr. Braden was not cited.

Levi A. Brown

Mr. Brown, 53, is blind in his right eye due to a childhood injury. The best-corrected visual acuity in his left eye is 20/20. Following an examination in 2005, his optometrist noted, ''It is my opinion that he should be able to operate the commercial vehicles that he has been operating many years now.'' Mr. Brown reported that he has driven straight trucks for 30 years, accumulating 60,000 miles, and tractor-trailer combinations for 17 years, accumulating 85,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Henry L. Chastain

Mr. Chastain, 56, lost vision in the left eye due to an injury. His best-corrected visual acuity in the right eye is 20/20 and in the left, hand motions. Following an examination in 2005, his optometrist noted, ''It is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Chastain reported that he has driven straight trucks for 35 years, accumulating 1.7 million miles, and tractor-trailer combinations for 12 years, accumulating 600,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violation in a CMV.

Thomas R. Crocker

Mr. Crocker, 59, has a prosthetic left eye due to an injury at age 13. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2004, his optometrist noted, ''In my opinion, Mr. Crocker has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Crocker reported that he has driven straight trucks for 36 years, accumulating 360,000 miles, and tractor-trailer combinations for 33 years, accumulating 990,000 miles. He holds a Class D driver's license from South Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Clint Edwards

Mr. Edwards, 35, has amblyopia in his right eye since birth. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/15. Following an examination in 2005, his optometrist noted, ''I feel he does have sufficient vision to perform the vision driving tasks required to operate a commercial vehicle.'' Mr. Edwards reported that he has driven tractor-trailer combinations for 5 years, accumulating 459,000 miles. He holds a Class O driver's license from Nebraska. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the reporting officer, while Mr. Edwards was attempting to make a left turn, his tractor-trailer collided with another vehicle due to snowy road conditions. Neither Mr. Edwards nor the driver of the other vehicle was cited in connection with the crash

Neil G. Finegan, Jr.

Mr. Finegan, 37, has a congenital cataract in his right eye. At age 5 he underwent cataract surgery with insertion of an intraocular lens implant. The best-corrected visual acuity in his right eye is light perception and in the left, 20/15. His optometrist examined him in 2005 and noted, ''In my medical opinion Neil has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Finegan reported that he has driven straight trucks for 18 years, accumulating 720,000 miles, and tractor-trailer combinations for 18 years, accumulating 900,000 miles. He holds a chauffeur Class CA CDL from Michigan. Mr. Finegan's driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. Mr. Finegan's vehicle was struck by another truck that entered his lane. The truck's driver had fallen from his truck with the engine running and in gear. The other driver was found at fault for negligent operation of a vehicle. Neither driver was cited.

Gerald W. Fox

Mr. Fox, 59, has prosthetic left eye due to trauma incurred on December 23, 2001. The visual acuity in his right eye is 20/20. His optometrist examined him in 2005 and noted, ''Mr. Fox's visual condition is stable and is sufficient to allow him to operate a commercial vehicle without restrictions.'' Mr. Fox reported that he has driven tractor-trailer combinations for 34 years, accumulating 3.0 million miles. He holds a Class A CDL with a motorcycle endorsement from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Ronald Fultz

Mr. Fultz, 48, has traumatic maculopathy in his right eye since January 2002. His visual acuity in the right eye is 20/70 and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, ''I feel that Mr. Fultz can still operate a commercial vehicle as he has done so since his injury in January 2001.'' Mr. Fultz reported that he has driven straight trucks for 7 years, accumulating 1.7 million miles, and tractor-trailer combinations for 18 years, accumulating 1.6 million miles. He holds a Class A CDL with a Class D drivers license endorsement from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Henke Galloway

Mr. Galloway, 29, has a macular hole in his right eye due to an injury 12 years ago. The visual acuity in his right eye is 20/80 and in the left, 20/20. His optometrist examined him in 2005 and noted, ''I consider Mr. Galloway completely qualified for this type of driving with no danger to himself or the public. It would be my recommendation to grant him an interstate driver's license with no restrictions.'' Mr. Galloway reported that he has driven straight trucks for 5 years, accumulating 275,000 miles, and tractor-trailer combinations for 7 years, accumulating 770,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Richard L. Gandee

Mr. Gandee, 49, has reduced visual acuity in his left eye due to a macular scar. The best-corrected visual acuity in his right eye is 20/15 and in the left, 20/50. His optometrist examined him in 2005 and noted, ''I am of the opinion that his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gandee reported that he has driven straight trucks for 2 years, accumulating 260,000 miles, and tractor-trailer combinations for 21 years, accumulating 2.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Raymond A. Gravel

Mr. Gravel, 45, has had a retinal detachment in his right eye since 1974. The best-corrected visual acuity in his right eye is 20/400 and in the left, 20/25+. Following an examination in 2005 his optometrist noted, ''Mr. Gravel has sufficient vision with glasses or contact lenses to operate a commercial vehicle.'' Mr. Gravel reported that he has driven straight trucks for 5 years, accumulating 500,000 miles, tractor-trailer combinations for 7 years, accumulating 599,998 miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no crashes or

convictions for moving violations in a CMV.

John C. Holmes

Mr. Holmes, 54, has amblyopia in his right eye since childhood. The best-corrected visual acuity in his right eye is 20/400 and in the left, 20/15. Following an examination in 2005 his ophthalmologist noted, ''I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Holmes reported that he has driven straight trucks for 13 years, accumulating 507,000 miles, tractor-trailer combinations for 4 years, accumulating 100,000 miles, and buses for 2 years, accumulating 18,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

John L. Hynes

Mr. Hynes, 61, has amblyopia in his left eye since childhood. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2005, his optometrist noted, ''Mr. Hynes'' vision remains unchanged since childhood and/is has been sufficient to perform driving tasks for a commercial vehicle.'' Mr. Hynes reported that he has driven straight trucks for 36 years, accumulating 360,000 miles, and tractor-trailer combinations for 15 years, accumulating 75,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Kevin Jacoby

Mr. Jacoby, 38, has amblyopia and strabismus in his right eye since childhood. The visual acuity in his right eye is hand motions and in the left, 20/20. His optometrist examined him in 2005 and noted, ''In my professional opinion, Mr. Jacoby has sufficient vision to operate a commercial vehicle.'' Mr. Jacoby reported that he has driven straight trucks for 5 years, accumulating 75,000 miles. He holds a Class D driver's license from New Jersey. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Frank E. Johnson, Jr.

Mr. Johnson, 30, has had a corneal transplant in his left eye due to a childhood injury. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2005, his ophthalmologist noted, ''I believe that Mr. Johnson does have adequate vision to perform the driving tasks required to operate this type of commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 11 years, accumulating 68,640 miles. He holds a Class C CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Vladimir Kats

Mr. Kats, 56, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, count finger. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Kats has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kats reported that he has driven straight trucks for 4 years, accumulating 100,000 miles. He holds a Class C driver's license from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

John G. Kaye

Mr. Kaye, 49, has had retinal detachment in his right eye since 1990. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/15. His optometrist examined him in 2005 and noted, ''In my opinion, Mr. Kaye is qualified to drive a commercial vehicle with his current ocular status.'' Mr. Kaye reported that he has driven straight trucks for 16 years, accumulating 160,000 miles. He holds a Class B CDL with a motorcycle endorsement from Massachusetts. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Alfred Keehn

Mr. Keehn, 56, has had a prosthetic right eye for the past two years. Prior to the prosthetic eye, Mr. Keehn has had reduced vision since birth in his right eye. The best-corrected visual acuity in the left eye is 20/20–3. Following an examination in 2005, his optometrist noted, ''Mr. Keehn has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Keehn reported that he has driven straight trucks for 8 years, accumulating 200,000 miles, and tractor-trailer combinations for 30 years, accumulating 1.8 million miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Richard H. Kind

Mr. Kind, 43, has a central scar in his left eye due to an injury at age 15. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/200. Following an examination in 2004, his optometrist noted, ''It is my opinion that with excellent vision in the right eye and normal peripheral vision in the left eye, Richard does possess sufficient visual abilities to operate a commercial vehicle.'' Mr. Kind reported that he has driven straight trucks for 15 years, accumulating 300,000 miles, and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A CDL from Washington State. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Paul Laffredo, Jr.

Mr. Laffredo, 63, has macular degeneration and posterior vitreous detachment in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''It is my opinion Mr. Laffredo has sufficient vision to operate a commercial vehicle at this time.'' Mr. Laffredo reported that he has driven buses for 16 years, accumulating 960,000 miles. He holds a Class B CDL with a motorcycle endorsement from Pennsylvania. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 15 mph.

Bobby G. LaFleur

Mr. LaFleur, 48, has esotropia with amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/30 and in the left, 20/80. Following an examination in 2005, his ophthalmologist noted, ''I believe that he can see well enough to perform the driving tasks required to operate a commercial vehicle.'' Mr. LaFleur reported that he has driven tractor-trailer combinations for 28 years, accumulating 2.4 million miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Robert S. Larrance

Mr. Larrance, 56, suffered retinal detachment to his right eye with surgical repair in April of 2002. His best-corrected visual acuity in the right eye is hand motions and in the left, 20/20. Following an examination in 2005, his ophthalmologist noted, ''My opinion is that this individual has sufficient vision to drive a commercial vehicle.'' Mr. Larrance reported that he has driven straight trucks for 10 years accumulating 1.0 million miles, and tractor-trailer

combinations for 26 years, accumulating 3.9 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Earnest W. Lewis

Mr. Lewis, 60, has had poor vision in his left eye since 1997 due to central retinal artery occlusion. His best-corrected visual acuity in the right eye is 20/20, and in the left, hand motions. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, the patient's vision is sufficient to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for 37 years, accumulating 1.2 million miles, and tractor-trailer combinations for 28 years, accumulating 2.2 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 20 mph.

John D. McCormick

Mr. McCormick, 66, is blind in his right eye due to a traumatic injury in 1998. His best-corrected visual acuity in the right eye is light perception, and in the left eye, 20/20. Following an examination in 2004, his ophthalmologist noted, ''In my opinion the monocular vision that you have present in the left eye is adequate to perform the driving tasks required to operate a commercial vehicle.'' Mr. McCormick reported that he has driven straight trucks for 23 years, accumulating 483,000 miles, and tractor-trailer combinations for 22 years, accumulating 440,000 miles, and buses for 2 years, accumulating 220,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Thomas C. Meadows

Mr. Meadows, 41, has loss of vision in his left eye due to a traumatic injury in 2000. His visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2005, his optometrist noted, ''It is my opinion that Thomas Craig Meadows has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Meadows reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.7 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Timothy S. Miller

Mr. Miller, 48, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/50 and in the left, 20/20. Following an examination in 2004, his optometrist noted, ''It is my opinion that Mr. Miller has sufficient vision to perform the driving tasks required to operate a commercial vehicle. Mr. Miller reported that he has driven tractor-trailer combinations for 21 years, accumulation 2.1 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows one conviction for moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

Roger D. Mollak

Mr. Mollak, 46, has amblyopia in his left eye since birth. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His ophthalmologist examined him in 2005 and noted, ''The patient's visual circumstance is unchanged in the last several years and I see no reason based on his vision, that he should not be able to operate a commercial vehicle.'' Mr. Mollak reported that he has driven straight trucks for 26 years, accumulating 260,000 miles and tractor-trailer combinations for 5 years, accumulating 25,000 miles. He holds a Class O operators license from Nebraska. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Michael R. Moore

Mr. Moore, 39, has vision loss in his left eye due to a traumatic injury in 2001. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His ophthalmologist examined him in 2005 and noted, ''In my opinion, Mr. Moore should have sufficient vision to operate a commercial vehicle based on his continued operation for the past four years.'' Mr. Moore reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.1 million miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the limit by 24 mph.

Jade D. Morrical

Mr. Morrical, 52, has a prosthetic left eye due to an injury in 1974. His visual acuity in the right eye is 20/20. Following an examination in 2005, his ophthalmologist noted, ''I feel Mr. Morrical has sufficient vision to perform his duties as a commercial truck driver in that he has been doing this for many, many years and is well adapted from his visual deficiency.'' Mr. Morrical reported that he has driven straight trucks and tractor-trailer combinations for 11 years, accumulating 132,000 miles in the former and 66,000 miles in the latter. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, a driver collided with the rear of Mr. Morrical's vehicle while he was slowing for traffic. Mr. Morrical was not cited.

David A. Morris

Mr. Morris, 48, has amblyopia in his left eye since childhood. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2005, his optometrist noted, ''In my professional opinion, Mr. Morris has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Morris reported that he has driven straight trucks for 3 years, accumulating 120,000 miles, and tractor-trailer combinations for 26 years, accumulating 2.6 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Leigh E. Moseman

Mr. Moseman, 61, primary visual problem is macular scar in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/15. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Moseman has sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Mr. Moseman reported that he has driven straight trucks for 10 years accumulating 285,000 miles, and tractor-trailer combinations for 6 years, accumulating 52,000 miles. He holds a Class C driver's license from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Gary T. Murray

Mr. Murray, 49, has a prosthetic left eye resulting from trauma incurred in 1990. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Murray has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Murray reported that he has driven straight trucks for 30 years accumulating 1.2 million miles, and tractor-trailer combinations for 27 years, accumulating 945,000 miles. He holds a

Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Larry D. Neely

Mr. Neely, 50, has amblyopia in his left eye since childhood. The best-corrected visual acuity in his right eye is 20/20 and in the left, counting fingers. His ophthalmologist examined him in 2005 and noted, ''I certify in my medical opinion that Larry Neely has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Neely reported that he has driven straight trucks for 8 months, accumulating 25,000 miles, and buses for 2 years, accumulating 30,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and two convictions for moving violations—speeding—and ''disregarding traffic control light'' in a CMV. He exceeded the speed limit by 15 mph.

Jorge L. Osuna

Mr. Osuna, 47, has a traumatic cataract and corneal scarring in his right eye due to an injury 20 years ago. His best-corrected visual acuity in the right eye is hand motion and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''Patient has adequate vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Osuna reported that he has driven straight trucks and tractor-trailer combinations for 9 years, accumulating 765,000 miles in each. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Joseph B. Peacock

Mr. Peacock, 27, has loss of vision in his left eye due to trauma at age 16. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/60. His optometrist examined him in 2005 and noted, ''Based on his examination, I feel Mr. Peacock can safely operate a commercial vehicle at this time.'' Mr. Peacock reported that he has driven straight trucks for 4 years, accumulating 20,000 miles, and tractor-trailer combinations for 4 years, accumulating in the former 30,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Scott D. Russell

Mr. Russell, 45, lost his left eye due to an injury 30 years ago. The best-corrected visual acuity in his right eye is 20/25. His optometrist examined him in 2005 and noted, ''From a visual standpoint, in my opinion, this patient has sufficient vision to operate a commercial vehicle.'' Mr. Russell reported that he has driven straight trucks for 15 years, accumulating 210,000 miles. He holds a Class B CDL from Minnesota. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Louis R. Saalinger

Mr. Saalinger, 68, lost the vision in his left eye due to an injury in 1965. The visual acuity in his right eye is 20/20. His optometrist examined him in 2005 and noted, ''In my opinion, Mr. Saalinger has a perfect right eye with full fields, color vision and excellent acuity. With the proper mirrors he can continue to drive a commercial vehicle as he has for over 30+ years.'' Mr. Saalinger reported that he driven straight trucks for 40 years, accumulating 400,000 miles, and tractor-trailer combinations for 40 years, accumulating 800,000 miles. He holds a Class A CDL with a motorcycle endorsement from Pennsylvania. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. Mr. Saalinger's vehicle was struck when another vehicle entered his travel lane. The other driver was cited. Mr. Saalinger was not cited.

James L. Schmidt

Mr. Schmidt, 37, is blind in his right eye due to an accident in 1981. The best-corrected visual acuity in his right eye is light perception and in the left, 20/20. His optometrist examined him in 2005 and noted, ''With his spectacle prescription, Mr. Schmitt has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schmitt reported that he has driven straight trucks for 20 years, accumulating 600,000 miles, and tractor-trailer combinations for 10 years, accumulating 1.0 million miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Richard P. Stanley

Mr. Stanley, 47, has amblyopia in his left eye since birth. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/600. Following an examination in 2005, his ophthalmologist noted, ''He has proven to be a safe and capable driver for the past ten years so I believe his vision is sufficient for him to operate commercial vehicles.'' Mr. Stanley reported that he has driven straight trucks for 28 years, accumulating 840,000 miles, and tractor-trailer combinations for 28 years, accumulating 532,000 miles. He holds a Class A CDL with a motorcycle endorsement from Massachusetts. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Paul Stoddard

Mr. Stoddard, 48, has amblyopia in his left eye since early childhood. His visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2005, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stoddard reported that he has driven straight trucks for 21 years, accumulating 151,000 miles, tractor-trailer combinations for 21 years, accumulating 504,000 miles, and buses for 10 years, accumulating 5,000 miles. He holds a Class A CDL with a motorcycle endorsement from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Robert L. Tankersley, Jr.

Mr. Tankersley, 43, had a corneal transplant in his left eye in 2000. His best-corrected visual acuity in the right eye is 20/25 and in the left, light perception. Following an examination in 2005, his optometrist noted, ''In my medical opinion, he has sufficient vision to operate and perform driving tasks for operating a commercial vehicle.'' Mr. Tankersley reported that he has driven straight trucks for 2 years accumulating 90,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.5 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Scott Tetter

Mr. Tetter, 43, has had an underdeveloped macular in his right eye since birth. His best-corrected visual acuity in the right eye is 20/200, and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''In my opinion Scott Tetter's vision is sufficient to operate a commercial vehicle.'' Mr. Tetter reported that he has driven straight trucks for 24 years, accumulating 1.3 million miles. He holds a Class A CDL with a motorcycle endorsement from Illinois. His driving record for the last

3 years shows no crashes or convictions for moving violations in a CMV.

Benny R. Toothman

Mr. Toothman, 49, has misalignment of his right eye since birth. His best-corrected visual acuity in the right eye is count fingers, and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''In my medical opinion he will have no difficulty driving a commercial vehicle.'' Mr. Toothman reported that he has driven a straight truck for 3 years, accumulating 4,500 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Dewayne Washington

Mr. Washington, 33, has optic atrophy in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, light perception. His ophthalmologist examined him in 2005 and noted, ''In my opinion, he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Washington reported that he has driven tractor-trailer combinations for 6 years, accumulating 468,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Kris Wells

Mr. Wells, 24, has a prosthetic left eye resulting from trauma incurred four years ago. The best-corrected visual acuity in his right eye is 20/15. His optometrist examined him in 2005 and noted, ''In my opinion, Kris Wells'' acuity and peripheral vision in the right eye are good and he should be able to operate a commercial vehicle safely.'' Mr. Wells reported that he has driven straight trucks for 1 year, accumulating 100,000 miles, and tractor-trailer combinations for 6 years, accumulating 900,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

James T. Wortham, Jr.

Mr. Wortham, 40, suffered a retinal detachment of his left eye in 1977. His visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wortham reported that he has driven straight trucks for 11 years, accumulating 198,000 miles. He holds a Class C driver's license from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: September 26, 2005.

Pamela M. Pelcovits,

Director, Policy, Plans and Regulation.

[FR Doc. 05–19595 Filed 9–29–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Actions on Exemption Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in January 2005 to August 2005. The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on September 26, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
MODIFICATION EXEMPTION GRANTED				
11691–M		PepsiCo International, Valhalla, NY.	49 CFR 176.83(d); 176.331; 176.800(a).	To modify the exemption to update a proper shipping description and authorize the transportation of a Class 9 material with Class 3 and Class 8 materials not subject to the segregation requirements for vessel storage when shipped in the same transport vehicle.
12643–M	RSPA–01–9066	Northup Grumman Space Technology, Redondo Beach, CA.	49 CFR 173.302 and 175.3.	To modify the exemption to authorize an additional design change to the pulse tube cooler with an increased volume to 1100 cc and test pressure to 915 psig shipped inside a strong, foam filled shipping container.
11917–M	RSPA–97–2741	Sexton Can Company, Inc., Decatur, AL.	49 CFR 173.304(a)	To modify the exemption to authorize an increased water capacity limit to 40.4 cubic inches and the transportation of an additional Division 2.1 material in non-DOT specification, non-refillable steel cylinders.
7465–M		State of Alaska Department of Transportation & Public Facilities, Juneau, AK.	49 CFR 172; 173.220	To modify the exemption to authorize the addition of a new ferry vessel to the existing passenger ferry fleet.

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
7928–M		State of Alaska Department of Transportation & Public Facilities, Juneau, AK.	49 CFR 172.101; 176.905(L).	To modify the exemption to authorize the addition of a new ferry vessel to the existing passenger ferry fleet.
12844–M	RSPA–01–10753	Delphi Automotive Systems, Vandalia, OH.	49 CFR 173.301(a)(1); 173.302a(a); 175.3.	To modify the exemption to authorize an increase of the maximum service pressure to 7,200 psig for the non-DOT specification pressure vessels.
12995–M	RSPA–02–12220	Dow Chemical Company, Midland, MI.	49 CFR 173.306(a)(3)(v).	To modify the exemption to authorize the use of the DOT 2Q specification container with an increased container pressure not to exceed 180 psig at 55 degrees C.
13322–M	RSPA–03–16595	UXB International Inc., Blackburg, VA.	49 CFR 172.320; 173.54(a); 173.56(b); 173.58.	To modify the exemption to authorize the transportation of liquid explosives.
13996–M	RSPA–04–19660	North American Automotive Hazardous Material Action Committee (NAAHAC), Washington, MI.	49 CFR 173.166(e)(4) ..	To reissue the exemption originally issued on an emergency basis for the transportation of airbag inflators/modules/pyrotechnic seat belt pretensioners in reusable high stretch plastic or metal containers or dedicated handling devices.
11606–M		Safety-Kleen Systems, Inc., Humble, TX.	49 CFR 173.28(b)(2)	To modify the exemption to authorize the transportation of an additional Division 6.1 and Class 8 material in UN Standard 1A1 and 1A2 drums and non-DOT specifications metal drums.
11244–M		Supercritical Thermal Systems, Inc., (formerly Aerospace Design & Development, Inc.), Longmont, CO.	49 CFR 173.316(c); 178.57.	To modify the exemption to authorize an alternative outer shell material for the non-DOT specification titanium alloy cylinder transporting a Division 2.2 material.
11281–M		E.I. du Pont de Nemours & Company, Wilmington, DE.	49 CFR 172.101, Column 7, Special Provisions B14, T38.	To modify the exemption to authorize the use of an additional portable tank specification and the transportation of an additional Class 8 material.
12842–M	RSPA–01–10751	Onyx Environmental Services, L.L.C., Flanders, NJ.	49 CFR 173.156(b)	To modify the exemption to authorize a reoffering provision of the package to a nonholder of the exemption and transportation of Division 2.1 and Division 2.2 materials to an alternative disposal facility.
13245–M	RSPA–03–15985	Piper Metal Forming Corporation (formerly Quanex), New Albany, MS.	49 CFR 173.302(a)(1); 175.3.	To modify the exemption to authorize the use of non-refillable, non-DOT specification cylinders for all gases approved for shipment in DOT–3AL Specification cylinders.
13323–M	RSPA–03–16488	U.S. Department of the Interior/U.S. Geological Survey, Woods Hole, MA.	49 CFR 173.302a	To modify the exemption to authorize an alternative higher pressure-rated cover for the non-DOT specification cylinders transporting a Division 2.1 material.
13548–M	RSPA–04–17545	Battery Council International (BCI).	49 CFR 173.159	To modify the exemption to authorize alternative classifications for the transportation of battery fluid, acid.
13598–M	RSPA–04–18706	Jadoo Power Systems Inc. Folsom, CA.	49 CFR 173.301(a)(1), (d) and (f).	To modify the exemption to authorize an increased maximum water capacity to 3.25 pounds for the hydride canister design and the use of UN4G fiberboard boxes.
14145–M	PHMSA–05–20834	T–AKE Naval Sea Systems Command, Washington, DC.	49 CFR 176.116	To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 1 materials by vessel and provide relief from the general stowage requirements for Class 1 materials.
14165–M	PHMSA–05–20619	Saint Louis, University—Center for Vaccine Development, St. Louis, MO.	49 CFR 173.196	To modify the exemption to extend the expiration date to complete the one-time, one-way transportation of infectious substances and diagnostic specimens in containers not authorized in the HMR.
9880–M		GE Reuter-Stokes, Inc., Twinsburg, OH.	49 CFR 173.302a; 175.3; Part 172 Subpart E and F.	To modify the exemption to authorize an increase in design pressure to 440 psig for the non-DOT specification containers transporting Division 2.2 materials.

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
10048–M		Epichem, Inc., Haverhill, MA.	49 CFR 173.181; 173.187; 173.201; 202, 211, 212, 216, 227.	To modify the exemption to update various proper shipping names and UN numbers for the Division 4.2, 4.3 and 6.1 materials transported in a UN1A2 drum inside a non-DOT specification metal container.
11379–M		TRW Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302(a); 175.3.	To modify the exemption to increase the maximum service pressure at 70 degrees F for the non-DOT specification pressure vessels for use as components of safety systems.
12920–M	RSPA–02–11638	Epichem, Inc., Haverhill, MA.	49 CFR 173.181(c)	To modify the exemption to update the proper shipping name and UN number for a Division 4.2 material transported in combination packagings with inner containers that exceed authorized quantities.
13207–M	RSPA–03–15068	BEI Hawaii, Honolulu, HI.	49 CFR 173.32(f)(5)	To modify the exemption to authorize the use of additional DOT Specification IM 101 steel portable tanks that do not conform to the filling density requirements for the transportation of a Class 8 material.
13220–M	RSPA–03–14968	Advanced Technology Materials, Inc. (ATMI), Danbury, CT.	49 CFR 173.301; 173.302; 173.304; 173.315.	To modify the exemption to authorize the use of alternative manufacturers, cylinder shapes and mixed metal construction for the non-DOT specification welded pressure vessels.
11970–M	RSPA–97–2993	Albermarle Corp., Baton Rouge, LA.	49 CFR, 172.101; 178.245–1(c).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in a non-DOT specification portable tank.
14170–M	PHMSA–05–20714	General Dynamics Armament & Technical Products, Lincoln, NE.	49 CFR 173.301 and 173.306.	To reissue the exemption originally issued on an emergency basis for transportation of certain compressed gases in non-DOT specification fiberglass reinforced plastic cylinders.
11606–M		Safety-Kleen Systems, Inc., Humble, TX.	49 CFR 173.28(b)(2)	To modify the exemption to authorize the transportation of an additional Class 3 material in UN Standard 1A1, 1A2 and non-DOT specification steel drums.
13616–M	RSPA–2004–18578	U.S. Department of Commerce, Anchorage, AK.	49 CFR 172.101, Column 9B.	To reissue the exemption originally issued on an emergency basis for transportation of a Division 2.2 material in DOT Specification cylinders that are manifolded together and exceed the quantity limitations for cargo aircraft only.
13312–M	RSPA–2004–19656	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.301(f)(3); 180.205(c)(4).	To authorize an alternative retesting method for DOT–3, 3A, 3AA cylinders used in transporting Division 2.1 hazardous materials.
14171–M	PHMSA–05–20832	NASA, Houston, TX	49 CFR 173.301(f)	To reissue the exemption originally issued on an emergency basis for transportation of a Division 2.2 material in non-DOT specification cylinders without pressure relief devices.
14193–M	PHMSA–05–21763	Honeywell, Morristown, NJ.	49 CFR 173.313	To reissue the exemption originally issued on an emergency basis for transportation of non-DOT specification IMO Type 5 portable tanks, mounted in an ISO frame, containing certain Division 2.2 and 2.3 materials.
14194–M	PHMSA–05–21246	Zippo Manufacturing Corporation, Bradford, PA.	49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33.	To reissue the exemption originally issued on an emergency basis for the transportation of Zippo lighters in special travel containers in checked luggage on commercial passenger-carrying aircraft.
13977–M	RSPA–005–20129	Aethra Aviation Technologies, Farmingdale, NY.	49 CFR 173.302a; 175.3.	To reissue the exemption previously issued on an emergency basis for the transportation of a Division 2.2 and Class 9 material in certain cylinders that are charged in excess of their marked pressure used as components in aircraft.
11318–M		Akzo Nobel Chemicals, Inc., Chicago, IL.	49 CFR 172.101 Special Provision B14.	To modify the exemption to authorize the transportation of an additional Division 6.1 material in uninsulated DOT Specification 51 portable tanks.
10695–M		3M Company, St. Paul, MN.	49 CFR 172.101; 172.504; 172.505(a); 173.323; 174.81; 176.84; 177.848.	To modify the exemption to authorize a revision to the 3M Steri-Gas Cartridge Return Procedures containing a Division 2.3 material transported in UN4G fiberboard boxes.

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
9830–M		Worthington Cylinder Corporation, Columbus, OH.	49 CFR 173.201; 173.202; 173.203; 173.302a(a); 173.304a(a) & (d); 175.3.	To modify the exemption to authorize the transportation of certain Class 8 materials in non-DOT specification steel cylinders by motor vehicle only.
10048–M		Epichem, Inc., Haverhill, MA.	49 CFR 173.181; 173.187; 173.201, 202, 211, 212, 226, 227.	To modify the exemption to authorize the transportation of additional Division 6.1 materials transported in a UN1A2 drum inside a non-DOT specification metal container.
13179–M	RSPA–02–14020	Clean Harbors Environmental Services, Inc., Columbia, SC.	49 CFR 173.21; 173.308.	To modify the exemption to authorize the use of an alternative shipping description and hazard class for the Division 2.1 materials which are being transported to a disposal facility.
12630–M	RSPA–01–8850	Chemetall GmbH Gesellschaft, 59500 Douai, France.	49 CFR 172.102(a)(2) and (c)(7)(ii).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in DOT Specification IM 101 portable tanks.
12475–M	RSPA–00–7484	Chemetall Foote Corporation, Kings Mountain, NC.	49 CFR 173.181; 173.28(b)(2).	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 and Division 4.3 material transported in UN1A1 drums.
10798–M		Chemetall Foote Corporation, Kings Mountain, NC.	49 CFR 174.67(i), (j)	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in DOT Specification tank cars.
		NEW EXEMPTION GRANTED		
14137–N	RSPA–20346	Mallinckrodt Baker, Inc., Phillipsburg, NJ.	49 CFR 172.102(c)(4), special provision IB2.	To authorize the transportation in commerce of Hycrochloric acid up to 38% concentration in intermediate bulk containers. (mode 1)
14139–N	RSPA–20344	Commodore Advanced Sciences, Inc., Richland, WA.	49 CFR 173.244 in that a non-DOT steel vessel is not an authorized packaging, except under an exemption.	To authorize the one-time, one-way transportation in commerce of solidified sodium metal in a non-DOT specification bulk packaging. (mode 1)
14144–N	RSPA–20337	Lawrence Livermore National Laboratory, Livermore, CA.	49 CFR 173.212	To authorize the one-time transportation in commerce of lithium hydride, fused solid inspecially designed no-bulk containers. (mode 1)
14152–N	PHMSA–20467	Saes Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To authorize the transportation of certain quantities of metal catalyst, classed as Division 4.2, in non-DOT specification pckaging that exceed the maximum net quantity allowed per package. (mode 4)
14154–N	PHMSA–20610	Carleton Technologies, Inc.	49 CFR 173.302a, 173.304a, 180.209.	To authorize the manufacture, marking and sale of non-DOT specification fully wrapped carbon fiber reinforced aluminim lined cylinders for shipment of certain Division 2.2 gases. (modes 1, 2, 3, 4, 5)
14155–N	PHMSA–20606	American Promotional Events, Inc., Florence, AL.	49 CFR 173.60	To authorize the transportation in commerce of certain fireworks in non-DOT specification packagings when returned to the distributor. (mode 1)
14157–N	PHMSA–20609	Worthington Cylinders of Canada Corp., Tilbury, Ontario N0P 2L0.	49 CFR 173.302a	To authorize the manufacture, marking, sell and use of non-DOT specification cylinders similar to DOT 3AA for use in transporting certain nonflammable gases. (modes 1, 4)
14158–N	PHMSA–20611	UTC Fuel Cells, LLC, South Windsor, CT.	49 CFR 176.83	To authorize the transportation by vessel of a fuel cell power plant containing hazardous mateials that are not segregated as required by 49 CFR 176.83. (mode 3)
14164–N	PHMSA–20614	Sigma-Aldrich Corporation, Milwaukee, WI.	49 CFR 173.181	To authorize the transportation in commerce of non-DOT specification cylinders, similar to DOT 4BW cylinders, containing Trimethylaluminum. (modes 1, 2, 3)
14168–N	PHMSA–21796	Matheson Tri-Gas East Rutherford, NJ.	49 CFR 173.3(d)	To authorize the transportation in commerce of salvage cylinders by cargo vessel. (mode 3)
14172–N	PHMSA–20906	Pacific Bio-Material Management, Inc., Fresno, CA.	49 CFR 173.196 and 173.199.	To authorize the transportation in commerce of infectious substances in a large capacity liquid nitrogen freezer. (mode 1)

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
14176–N	PHMSA–20902	Great Plains Industries, Inc., Wichita, KS.	49 CFR 173.242	To authorize the manufacture, mark and sale of refueling tanks of up to 80 gallon capacity for use in transporting various Class 3 hazardous materials. (mode 1)
14183–N	PHMSA–21128	LND, Inc, Oceanside, NY.	49 CFR 173.302a, 172.101(9A).	To authorize the manufacture, marking, sale and use of non-DOT specification sealed electron tube radiation sensors to transport Division 2.1 and 2.2 materials. (modes 1, 2, 3, 4, 5)
14186–N	PHMSA–21132	Dow Chemical Company, Midland, MI.	49 CFR 179.13	To authorize the transportation in commerce of Class 3 and 8 and Division 2.1 and 6.1 hazardous materials in DOT specification 105J300W tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2)
14196–N	PHMSA–21765	Union Pacific Railroad, Omaha, NE.	49 CFR 174.67(i) and (j).	To authorize rail cars containing a combustible liquid to remain attached to unloading connectors without the physical presence of an unloader. (mode 2)
14201–N	PHMSA 05–21768	Murray Air, Inc., Ypsilanti, MI.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30.	To authorize the transportation in commerce by cargo only aircraft of Class 1 explosives which are forbidden or exceed quantities presently authorized. (mode 4)
14204–N	PHMSA 05–21772	Great Lakes Chemicals Corporation, Lafayette, IN.	49 CFR 173.226(b) and (d).	To authorize the transportation in commerce of bromine in single Monel packagings. (mode 1)
14222–N	PHMSA–21821	Clean Harbors Environmental Services, Inc., Bridgeport, NJ.	49 CFR 173.240	To authorize the transportation in commerce of a hazrdous waste (boiler stacks) on a flatbed motor vehicle. (mode 1)
14146–N	RSPA–20419	Brunswick Corporation, Lake Forest, IL.	49 CFR 173.220(e)	To authorize the transportation in commerce of certain engines, machinery and apparatus with up to 120 ml (4 ounces) of flammable liquid fuel by vessel. (mode 3)
14166–N	PHMSA–20668	Presidential Airways, Melbourne, FL.	49 CFR 172.101 Column (9B).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. (mode 4)
14173–N	PHMSA–20905	Dow Chemical Company, Midland, MI.	49 CFR 179.13	To authorize the transportation in commerce of ethylene oxide in DOT specification 105J400W tank cars that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2)
EE 14016–M	RSPA–04–19798	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 106, 107 and 171–180.	To reissue the exemption originally issued as an emergency exemption, to authorize the transportation in commerce of Tungsten hexafluoride in DOT Specification 3BN cylinders that have been requalified by external visual inspection instead of hydrostatic retesting and internal visual inspection.
EE 11379–M	.....	TRW Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the exemption to remove the five-year transportation limitation for completed air bag modules. (modes 1, 2, 3, 4)
EE 14160–M	PHMSA–05–20620	George Mason University, Fairfax, VA.	49 CFR 173.336, 173.192 and 17340.	To reissue the exemption originally issued on an emergency basis for the one time transportation in commerce of two cylinders that are no longer authorized to contain nitrogen dioxide (they were filled in the early 60's.) (mode 1)
EE 13179–M	RSPA–02–14020	Burlington Environmental dba, Philip Services Corp, Kent, WA.	49 CFR 173.21; 173.308.	To modify the exemption to include the additional modes of air and rail transporation for the transportation in commerce of lighters that have been removed from their approved inner packagings, are partially used, and are being transported for disposal without further approval. (mode 1)
EE 14005–M	RSPA–04–19585	Scientific Cylinder International, LLC, Castle Rock, CO.	49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a).	To modify the exemption to authorize the temporary, emergency authority to test cylinders at locations identified in Scientific Cylinder's application. (modes 1, 2, 3, 4, 5, 6)

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
EE 14006–M	RSPA–04–19586	Scientific Cylinder International LLC, Castle Rock, CO.	49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a).	To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3AL cylinders containing Division 2.1, 2.2 and 2.3 materials when retested by a 100% ultrasonic examination in lieu of the internal visual and hydrostatic retest. (modes 1, 2, 3, 4, 5, 6)
EE 14171–M	PHMSA–05–20832	NASA, Houston, TX	49 CFR 173.301(f)	To modify the exemption to allow transportation of a pressurized corrosive material. (modes 1, 4, 5)
EE 14181–M	PHMSA–2005–21089	American Promotional Events, Florence, AL.	49 CFR 173.62	To modify the exemption to allow more than 2 bulk packagings per common carrier and to increase the maximum capacity of the packaging. (mode 1)
EE 14116–N	RSPA–05–20123	Green's Blue Flame Gas Co., Inc., Houston, TX.	49 CFR 173.315(k)	To authorize the transportation in commerce of a non-DOT specification 500 gallon storage tank containing approximately 350 gallons of propane one-time, one-way for remediation. (mode 1)
EE 14117–N	RSPA–05–20130	MGP Ingredients, Inc., Atchison, KS.	49 CFR 180.509(h)(2) ..	To authorize the transportation in commerce of 65 DOT Specification stainless and steel tank cars which are overdue for inspection of the reclosing pressure relief devices. (mode 2)
EE 14118–N	PHMSA–05–21792	Tooele County Emergency Management, Tooele, UT.	49 CFR 172.101 HMT, Column (9B) and 175.5(a)(2).	To authorize the transportation in commerce of Propane in DOT Specification 4B240 cylinders exceeding the weight limitations authorized for shipment by cargo aircraft in Utah. (mode 4)
EE 14145–N	PHMSA–05–20834	T–AKE Navel Sea Systems Command, Washington, DC.	49 CFR 176.116	To authorize the transportation in commerce of certain class 1 materials by vessel in an alternative stowage configuration. (mode 3)
EE 14147–N	RSPA–05–20420	Clean Harbors Environmental Services, Inc., Greenbrier, TN.	49 CFR 173.244	To authorize the one-time shipment of a Division 4.3 material in non-DOT specification bulk packaging by highway. (mode 1)
EE 14153–N	PHMSA–05–20470	BASF Corporation, Florham Park, NJ.	49 CFR 173.227(c)	To authorize the one-time transportation in commerce of toxic liquid, corrosive, organic, N.O.S. in UN drums that do not have the required overpack. (mode 1)
EE 14160–N	PHMSA–05–20620	George Mason University, Fairfax, VA.	49 CFR 173.336, 173.192 and 173.40.	To authorize the one time transportation in commerce of two cylinders that are no longer authorized to contain nitrogen dioxide. (mode 1)
EE 14165–N	PHMSA–05–20619	Saint Louis, University—Center or Vaccine Development, St. Louis, MO.	49 CFR 173.196	To authorize the transportation in commerce of infectious substances and diagnostic specimens in containers that are not authorized in the HMR. (mode 1)
EE 14169–N	PHMSA–05–20670	Allied Universal Corporation, Miami, FL.	49 CFR 173.24, 179.300.	To authorize the one-time, one-way transportation in commerce of a leaking tank car tank that has been fitted with an emergency "B" chemical kit. The tank contains chlorine and an emergency exemption is necessary to protect life and the environment. (mode 1)
EE 14170–N	PHMSA–05–20714	General Dynamics, Lincoln, NE.	49 CFR 173.302a	To authorize the transportation in commerce of certain compressed gases in non-DOT specification fiberglass reinforced plastic cylinders. (modes 1, 2, 4)
EE 14171–N	PHMSA–05–20832	NASA, Houston, TX	49 CFR 173.301(f)	To authorize the transportation in commerce of nitrogen in non-DOT specification cylinders without pressure relief devices in support a space shuttle. (modes 1, 4, 5)
EE 14182–N	PHMSA–05–21125	Chugach Electric Association, Anchorage, AK.	49 CFR 172.101 (column 9b).	To authorize the transportation in commerce of certain materials that exceed quantity limitations when shipped by cargo aircraft. (mode 4)
EE 14192–N	PHMSA–05–21261	Huntsman Corporation, The Woodlands, TX.	49 CFR part 173, subparts A and B.	To authorize the transportation in commerce of several low pressure, high temperature reactors containing an oxidizer. (mode 1)
EE 14193–N	PHMSA–05–21763	Honeywell, Morristown, NJ.	49 CFR 173.313	To authorize the emergency transportation in commerce of Liquefied gas, toxic, flammable, inhalation hazard zone B, UN3160 in IMO type 5 portable tanks. (modes 1, 3)

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
EE 14194–N	PHMSA–05–21246	Zippo Manufacturing Corporation, Bradford, PA.	49 CFR 173.21, 173.24, 173.27, 173.308, 175.5, 175.10, 175.30, 175.33.	Emergency exemption request to authorize the transportation of Zippo lighters in special travel containers in checked luggage in commercial passenger aircraft. (mode 5)
EE 14195–N	PHMSA–05–21795	Burlington Environmental Inc., dba Philip Services Corporation, Kent, WA.	49 CFR 173.21	To authorize the emergency transportation in commerce of cigarette lighters for disposal in certain non-bulk packagings by cargo-only aircraft within the State of Alaska. (modes 1, 4)
EE 14203–N	PHMSA–05–21438	Alliant Techsystems, Inc. (ATK), Plymouth, MN.	49 CFR 172.203(a), 172.301(c), 178.3(c) and 178.503(a)(1).	Emergency request to authorize the transportation in commerce of 1.3C propellants contained in UN 1G fiber drums that have partial performance oriented packaging certification markings. (modes 1, 2, 3, 4, 5, 6)
EE 14208–N	PHMSA–05–21669	Lockheed Martin Space Systems Company, Sunnyvale, CA.	49 CFR 173.226 and 173.336.	To authorize the one-way highway transportation in commerce of a fueled THADD Duvert and Attitude Control System assembly containing separate cylinders of methyl hydrazine and dimitrogen tetroxide. (mode 1)
EE 14211–N	PHMSA–05–21775	Airgas, Vancouver, WA	49 CFR 172.301(c), 173.301(f).	Emergency request to authorize the transportation in commerce of anhydrous ammonia in a DOT Specification 4AA480 cylinder that developed a leak and has an Ammonia Emergency Kit applied. (mode 1)
EE 14224–N	PHMSA–05–22355	Petroleum Helicopters, Inc., Lafayette, LA.	49 CFR 172.101, 172.203(a), 172.301(c), 175.320(a).	To authorize the one time transportation in commerce of certain division 1.1 (1.1D) explosives which are forbidden by cargo aircraft. (mode 4)
EE 14181–N	PHMSA–05–21089	American Promotional Events, Florence, AL.	49 CFR 173.62	To authorize the transportation in commerce of fireworks in a non-DOT specification bulk container. (mode 1)
EMERGENCY EXEMPTION WITHDRAWN				
EE 13169–M	RPSA–02–13894	ConocoPhillips Alaska, Inc., Anchorage, AK.	49 CFR 172.101(9B)	To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 3 materials in DOT Specification UN31A intermediate bulk containers which exceed quantity limitations when shipped by air. (mode 4)

DENIED	
14142–N	Request by Arch Chemicals, Inc., Norwalk, CT, March 30, 2005 to authorize the transportation in commerce of a hazardous substance without marking, labeling or placarding when further packaged in a freight container.
14143–N	Request by Federal Industries Corporation, Plymouth, MN, May 17, 2005 to authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications in accordance with § 173.21(b).
14136–N	Request by American Environmental Group, Norfolk, VA, February 11, 2005 to authorize the transportation in commerce of regulated medical waste in bulk outer packagings exceeding the quantity limitations provided in 49 CFR 173.197(d)(3)(i).
14177–N	Request by OraSure Technologies, Inc., Bethlehem, PA, April 19, 2005 to authorize the transportation in commerce of a Division 2.1 material in a DOT specification 2Q container without shipping papers, marking or labeling.
14198–N	Request by Pfizer, Inc., Memphis, TN, July 12, 2005 to authorize the one-way transportation in commerce of certain infectious substances in special packagings transported by a contract carrier.
14200–N	Request by RACCA, Plymouth, MA, August 10, 2005 to authorize the transportation in commerce of packagings previously used for hazardous materials that have not had the hazard warning labels removed and are used for non-hazard commodities.
141214–N	Request by Input/Output Marine Systems, Harahan, LA, August 23, 2005 to authorize the transportation in commerce of certain lithium batteries as materials of trade.

[FR Doc. 05–19527 Filed 9–29–05; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–8, September 21, 2005) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and

Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19569 Filed 9–29–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34757]

North American Industrial Railway, Inc.—Acquisition and Operation Exemption—Corn Products International, Inc., and Chicago, Peoria & Western Railway, Inc.

North American Industrial Railway, Inc. (NAIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire exclusive operating rights over approximately 17 miles of rail line (including sidings and interchange tracks), owned by Corn Products International, Inc. (CPI), and CPI's affiliate, Chicago, Peoria & Western Railway, Inc. (CPW),[1] in Cook County, IL. The trackage serves the Argo Facility, owned by CPI, in Bedford Park, IL,[2] and is not designated by milepost markings. NAIR will operate over the rail property pursuant to an operating agreement with CPI and CPW.

NAIR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

Consummation was scheduled to take place on or after September 18, 2005 (the exemption became effective September 16, 2005, 7 days after filing).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34757, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Nardi, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19486 Filed 9–29–05; 8:45 am]

BILLING CODE 4915–01–P

[1] CPW owns 3,000 feet of the subject trackage, which provides access to the connection with the Belt Railway of Chicago. The balance of the trackage is owned by CPI.

[2] The trackage also serves another shipper located there.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1066X]

Central Illinois Railroad Company—Discontinuance of Service Exemption—in Peoria County, IL

On September 12, 2005, Central Illinois Railroad Company (CIRY) filed with the Surface Transportation Board a petition for exemption under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903–10905 to discontinue service over a segment of a rail line owned by the City of Peoria and the Village of Peoria Heights, IL. The segment extends between the north line of Candletree Drive at approximately milepost 8.50 in Peoria, IL, and the north line of Jefferson Street at approximately milepost 2.21 in Peoria, IL, a distance of 6.29 miles in Peoria County, IL.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by imposition of conditions to approval of discontinuance imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 30, 2005.

As indicated, CIRY seeks exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905, if required. Any filings related to these requests will be considered in the decision on the merits. Any OFA under 49 CFR 1152.27(b)(2), if appropriate, will be due no later than 10 days after service of a decision granting the petition for exemption.[1] Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–1066X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112. Replies to the petition are due on or before October 20, 2005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available though the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SEA has determined that this action is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2) and from historic reporting requirements under 49 CFR 1105.8(b)(3). Consequently, SEA concludes that this action does not require the preparation of an Environmental Assessment.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 27, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19621 Filed 9–29–05; 8:45 am]

BILLING CODE 4915–01–P

[1] On September 12, 2005, Pioneer Industrial Railway Company filed a notice of intent to file an OFA in this proceeding, to which CIRY filed a motion to reject. These filings will also be considered in the decision on the merits.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–103736–00]

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 final regulation, REG–103736–00, Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters.

DATES: Written comments should be received on or before November 29, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters.

OMB Number: 1545–1686.

Regulation Project Number: REG–103736–00.

Abstract: These final regulations modify and clarify the rules relating to confidential transactions under § 1.6011–4(b)(3) of the Income Tax Regulations. These regulations affect taxpayers participating in reportable transactions and persons responsible for maintaining and furnishing lists of investors in reportable transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 14, 2005.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E5–5339 Filed 9–29–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,

September 30, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 505

Medicare Program; Health Care Infrastructure Improvement Program; Selection Criteria of Loan Program for Qualifying Hospitals Engaged in Cancer-Related Health Care; Forgiveness of Indebtedness; Interim Final Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 505

[CMS–1287–IFC]

RIN 0938–AO03

Medicare Program; Health Care Infrastructure Improvement Program; Selection Criteria of Loan Program for Qualifying Hospitals Engaged in Cancer-Related Health Care

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period sets forth the criteria for implementing a loan program for qualifying hospitals engaged in research in the causes, prevention, and treatment of cancer as specified in section 1016 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173). Specifically, this rule establishes a loan application process by which qualifying hospitals including specified entities may apply for a loan for the capital costs of health care infrastructure improvement projects.

DATES: *Effective Date:* This interim final rule with comment period is effective November 29, 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 29, 2005.

In commenting, please refer to file code CMS–1287–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Deadline for submission of loan requests: To be assured consideration, applications must be received at the appropriate address from November 29, 2005 through 5 p.m. on December 29, 2005.

ADDRESSES: *Comments:* You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments*. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1287–IFC, P.O. Box 8020, Baltimore, MD 21244–8020.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Applications: Applications must be submitted to the following address: Centers for Medicare and Medicaid Services, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Attention: Loan for Cancer Hospitals, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1016 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended title XVIII of the Social Security Act (the Act) to establish section 1897 of the Act, the Health Care Infrastructure Improvement Program. Section 1897 of the Act authorizes the Secretary to establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of eligible projects.

Section 1897(c) of the Act as amended by section 6045 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Tsunami Relief Act of 2005) (Pub. L. 109–13) defines a qualifying hospital as a hospital or entity that is engaged in research in the causes, prevention, and treatment of cancer; and is designated as a cancer center for the National Cancer Institute (NCI) or is designated by the State legislature as the official cancer institute of the State and such designation by the State legislature occurred before December 8, 2003. Section 1897(c)(3) of the Act also specifies that an entity has the same meaning as specified in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under section 501(a) of the Code; has at least one existing memorandum of understanding or affiliation agreement with a hospital located in the State in which the entity is located; and retains clinical outpatient treatment for cancer on site as well as lab research and education and outreach for cancer in the same facility.

Section 1897(d) of the Act specifies that an eligible project is a project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

Section 1897(f) of the Act states that the Secretary may forgive a loan provided to a qualifying hospital, under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965, (20 U.S.C. 1087a *et seq.*). However, the Secretary shall condition such forgiveness on the establishment by the hospital of—(1) an outreach program for cancer prevention, early diagnosis and treatment that provides services to a substantial majority of the residents of the State or region, including residents of rural areas; (2) an outreach program that provides services to multiple Indian tribes; and (3) unique research resources (such as population databases); or an affiliation with an entity that has unique research resources.

Furthermore, before the Tsunami Relief Act of 2005, section 1897(g)(1) of the Act appropriated $200,000,000 to carry out the loan program. The funds allocated for the loan program are to remain available during the period beginning on July 1, 2004, and ending on September 30, 2008. However, the Congress rescinded $58,000,000 leaving $142,000,000 available for the loan program. The statute also states that not more than $2,000,000 can be used for the administration of the loan program for each of the fiscal years (that is, 2004

through 2008). No administrative funding was used in fiscal year 2004.

In addition, section 1897(i) of the Act as amended by section 6045(b) of the Tsunami Relief Act of 2005 states that there shall be no administrative or judicial review of any determination made by the Secretary under this section.

II. Provisions of the Interim Final Rule With Comment Period

Section 1897 of the Act authorizes the Secretary to establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of qualifying projects. Section 1897 of the Act also provides that criteria be established for—(1) selecting among qualifying hospitals that apply to participate in the loan program; and (2) forgiving indebtedness. This interim final rule with comment period establishes the loan program and the selection criteria for qualifying hospitals to participate in the loan program. We will publish a separate rule making document to describe the criteria for loan forgiveness.

A. Overview of the Loan Program

The statute provides specific definitions for a qualifying hospital and entity. However, in addition to being a ''hospital'' as defined in section 1861(e) of the Act or an ''entity'' as defined in section 1897(c)(3) of the Act, the applicant must meet the criteria described in section 1897(c)(2) of the Act in order to be considered a qualifying hospital.

To be designated as a cancer center for the NCI of the National Institutes of Health (NIH), the hospital must have been awarded a P30 Cancer Center Support Grant (CCSG) from NCI to fund the scientific infrastructure of the cancer center, see *http://www.cancer.gov/cancercenters/description.html.*

NCI designates two types of cancer centers: cancer centers, and comprehensive cancer centers. NCI describes ''cancer centers'' as those that have a scientific agenda that is primarily focused on basic science, population-based research or clinical research, or any two of the three components.

NCI describes ''comprehensive cancer centers'' as those that integrate research activities across three major areas: Laboratory, clinical, and population-based research. Hospitals that have been awarded a CCSG and are designated by NCI as either a cancer center or a comprehensive cancer center before December 8, 2003, will be considered qualifying hospitals. We chose the December 8, 2003 date for the NCI CCSG designation because it is the date of enactment of the MMA and consistent with the statutory date for State legislature designation of the official cancer institute of the State.

To be designated as the official cancer institute of the State, the entity must be designated by the State legislature as ''the official cancer institute of the State.'' Section 1897 of the Act specifies that designation by the State legislature must have occurred before December 8, 2003.

In this rule, we have added Subchapter H—Health Care Infrastructure Improvement Program to comply with section 1897 of the Act. Specifically, we have added part 505—''Establishment of the Health Care Infrastructure Improvement Program.'' We have added subpart A—Loan Criteria. Section 505.1 sets forth the ''Basis and Scope'' of part 505 which implements section 1016 of the MMA which amends Title XVIII of the Act to add section 1897. Section 1897 of the Act, as amended by section 6045 of the Tsunami Relief Act of 2005, authorizes the Secretary to establish a loan program by which qualifying hospitals may apply for a loan for the capital costs of the health care infrastructure improvement projects.

In § 505.3, for purposes of subpart A, we have set forth the following definitions:

• *Eligible project* means the project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

• *Entity* is an entity described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of the code. An entity also has at least one existing memorandum of understanding or affiliation agreement with a hospital located in the State in which the entity is located and retains clinical outpatient treatment for cancer on site as well as lab research, education, and outreach for cancer in the same facility.

• *Qualifying hospital* means a hospital as defined at section 1861(e) of the Act (42 U.S.C. 1395x(e)) or an entity (as defined in this section) that is—

(1) Engaged in research in the causes, prevention, and treatment of cancer; and is either

(2) Designated as a cancer center for the National Cancer Institute; or

(3) Designated by the State legislature as the official cancer institute of the State before December 8, 2003.

B. Qualifying Hospital Criteria for the Loan Program

The statute provides the following two sets of criteria for establishing the loan program: (1) Selecting among qualifying hospitals; and (2) forgiving indebtedness (that is, deciding if the loan funds may be forgiven). The statute also specifies conditions under which a loan may be forgiven. These conditions are based upon the qualifying hospital's establishment of the following:

• An outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas;

• An outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and

• Unique research resources (such as population databases); or an affiliation with an entity that has unique research resources.

Since the statute outlines specific criteria in which to forgive loans, we believe that it is consistent with the Congressional intent to give priority to qualifying hospitals that meet at least some of the statutory conditions for loan forgiveness when selecting qualifying hospitals for the loan program.

Although the statute does not require that these provisions be adopted as criteria for receiving funds under the loan program, these criteria are specified in statute for qualifying for loan forgiveness. Therefore, we recognize that it is not possible to forgive the qualifying hospital's debt if it had not initially been selected to receive funds under the loan program.

As previously stated, we will publish a separate rule-making document on the forgiveness of indebtedness. We are seeking specific comment on what additional criteria we should establish for any qualifying hospitals that do not meet these initial criteria, in the event that after granting loans to the initial applicants there are residual funds up to the $140 million maximum available for loan funds.

In § 505.5(a), we set forth the ''qualifying criteria'' requirements. To qualify for the loan program, the applicant must—

• Meet the definition of a qualifying hospital as set forth in § 505.3 of this part; and

• Request a loan for the capital costs of an eligible project as defined in § 505.3 of this part. The capital costs for which a qualifying hospital may obtain a loan are limited to the reasonable costs incurred by the hospital, and capitalized

on the Medicare cost report, for any facility or item of equipment that it has acquired the possession or use of at the time the loan funding is awarded.

C. Selection Criteria

In § 505.5(b), we set forth the ''selection criteria'' requirements. In selecting loan recipients, we will prioritize qualifying hospitals that meet the following criteria:

- The hospital is located in a State which based on population density is defined as a rural State. A rural State is one of ten States with the lowest population density. The ten States are prioritized beginning with the State with the lowest population density. Population density is determined based on the most recent available U.S. Census Bureau data.
- The hospital is located in a State with presence of multiple Indian tribes in the State. After prioritizing based on paragraph (b)(1), States are further prioritized based on the States with the most Indian tribes. The number of Indian tribes in the State is based on the most recent data available published in ''Indian Entities Recognized and Eligible to Receive Services from the United State Bureau of Indian Affairs'' (68 FR 68180) published on December 5, 2003.

1. Rural States

We recognize that conducting outreach to Indian tribes in sparsely populated, rural areas presents additional barriers and challenges. According to the Health Resources and Services Administration's (HRSA) History of the Rural Health Care Services Outreach Grant Program (2004), the rural population of the U.S. differs significantly from the urban population in such parameters as age, income, education, and health status. The HRSA report can be found at *http://www.ruralhealth.hrsa.gov/funding/outreachhistory.asp*. The HRSA report also states that generally, non-metropolitan populations have higher rates of poverty and unemployment and have fewer years of education than their metropolitan counterparts. Also according to the HRSA report, rural residents also experience poorer health status. Furthermore, the same report maintains that there are higher rates of chronic disease, infant mortality, accidental injuries related to farming activities, occupational hazards, and trauma mortality in rural areas as compared to metropolitan areas. In accordance with the HRSA report, lack of access to health care in rural communities compounds the effect of these health problems and that long distances between rural and urban communities and inadequate public transportation systems for rural areas further worsen these conditions.

Additionally, cancer care requires a sophisticated set of surgical and medical resources; however currently those resources are more commonly found in large urban settings. Finally, the HRSA report found that greater proportions of rural cancer patients are diagnosed at later stages than urban patients and are less likely than urban patients to receive state-of-the-art cancer treatments.

These factors illustrate some of the difficulties faced when trying to develop new and innovative cancer care outreach systems in rural communities.

Given the inherent barriers in conducting outreach in rural areas and the statutory priority placed on a qualifying hospital establishing an outreach program that services a substantial majority of the residents of a State, including residents of rural areas, we are prioritizing applicant entities located in rural States. One way to identify States that are rural is based on population density. Using population density as a measure of rural status is consistent with another section of the statute, which directs the establishment of a rural community hospital demonstration in States with low population densities (see section 410A of the MMA).

Section 410A of the MMA established a Rural Community Hospital Demonstration Program where the Secretary was given the authority to determine rural areas and select States with low population densities. In implementing section 410A of the statute, the Secretary determined the ten States with the lowest population density. Using Census Data released in 2004, the ten States with the lowest population density are: Alaska, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.

Since the loan forgiveness criteria in section 1016 of the MMA also focus on rural populations (that is, establishing outreach programs that provide services to residents of rural areas) and in order to be consistent, for purposes of implementing section 1016 of the MMA, we have chosen to use the same criteria we used to implement section 410A of the MMA to determine States with low population density. Therefore, we are requiring that qualifying hospitals be located in 1 of the 10 States with the lowest population density in order to receive funding under section 1897 of the Act.

2. Indian Tribes

The statute places a priority for loan forgiveness on qualifying hospitals that conduct outreach to multiple Indian tribes. Therefore, we believe it is important that funds under section 1897 of the Act be directed to qualifying hospitals in States that have a significant presence of Indian tribes. To identify States that have a significant presence of Indian tribes, we looked to the list of ''Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.'' The most recent notice was published in the **Federal Register** on December 5, 2003 (68 FR 68180) by the Department of the Interior, Bureau of Indian Affairs.

The statute places a top priority for loan forgiveness on hospitals that are conducting outreach programs, specifically, on outreach programs that provide services to multiple Indian tribes. Since the Congress provided special recognition in the loan forgiveness criteria to qualifying hospitals providing outreach services to multiple Indian tribes, we believe it is appropriate to focus on this same criteria in prioritizing which qualifying hospitals should be granted a loan. Therefore, we have based the second loan selection criterion on the presence of multiple Indian tribes, that is, that the qualifying hospital be located in a State with a large number of Indian tribes. We do not believe, in light of our understanding of the congressional intent, that it would be appropriate to initially provide for loans under section 1897 of the Act to qualifying hospitals in States which do not have a significant Indian tribe presence.

Therefore, in light of this priority on hospitals providing outreach to Indian tribes, the second criterion we are using to further rank qualifying hospitals is based on the number of Indian tribes within a State. Qualifying hospitals located in 1 of the 10 States with the lowest population densities (States that meet the first criterion) will be ranked subsequently according to the number of Indian tribes, in which the States with the most Indian tribes are given top priority. We believe hospitals and entities located in States with many Indian tribes, spread over a large, sparsely populated area, should be given first priority for loans under section 1897 of the Act, given the focus in the statute on rural populations and Indian tribes.

Table 1 below, shows the 10 least densely populated States, and ranks them according to the number of Indian tribes.

TABLE 1.—LEAST DENSELY POPULATED STATES

Rank for purposes of Section 1016 of the MMA	State	Number of Indian tribes	Population density—average population per square mile
1	Alaska	229	1.2
2	New Mexico	23	15.7
3	Nevada	19	21.3
4	South Dakota	9	10.2
5	Montana	7	6.4
6	Utah	7	29.1
7	Nebraska	6	22.7
8	North Dakota	4	9.2
9	Idaho	4	16.8
10	Wyoming	2	5.2

Source: ''Indian Entities Recognized and Eligible to Receive Services from the United State Bureau of Indian Affairs.'' The most recent notice was published in the FEDERAL REGISTER on December 5, 2003 (68 FR 68180).

U.S. Census Bureau, Population Division, Population Estimates Program, Population Density for States and Puerto Rico, July 1, 2004, *http://www.census.gov/popest/gallery/maps/popdens_2004.html*.

D. Application and Selection Criteria (§ 505.11)

1. Application Requirements

Qualifying hospitals interested in applying for the loan program must complete the loan application form which is available at *http://www.cms.hhs.gov/providers/hipps*. The qualifying hospital must provide all appropriate supporting documentation for each answer made on the loan application. The appropriate official (that is, a Chief Financial Officer, Chief Executive Officer or equivalent) of the qualifying hospital must provide signatures for each place indicated on the application. In accordance with the foregoing discussion, we believe qualifying hospitals located in States with multiple (or a significant number) of Indian tribes and low population density, should be given first priority for loans under section 1897 of the Act.

2. Submission of Application

We will begin to accept applications on September 30, 2005. All applications must be received by CMS no later than 5 p.m. on December 29, 2005. The request must be mailed or delivered by courier service. Facsimile (fax) or other electronic means are not acceptable. The request must be typed or clearly printed in ink. Qualifying hospitals must mail or deliver an original copy of their loan application to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Attention: Loan for Cancer Hospitals Mail Stop C4–08–06 7500 Security Boulevard Baltimore, Maryland 21244–1850.

Applicants may want to send their application by a delivery method that guarantees a signed receipt, which indicates delivery and date of delivery of their loan request. The address listed above is applicable for both United States mail and courier service delivery.

3. Evaluation Process

When we receive applications from qualifying hospitals, we will first evaluate the applicants to determine whether they meet the minimum qualifications as specified in section 1897 of the Act (that is, they are NCI designated cancer centers or designated as the official cancer institute of the State). We will then rank applicant entities based on the criteria as specified in § 505.5. We will continue to evaluate the request for funds under the loan program from any applicants in the highest ranking State, and subsequently move to the next highest ranking State, until the funds allocated under the loan program are exhausted.

If there are multiple qualified applicants from the State with requests for funds under the loan program that exceed the amount of funds remaining, we will pro-rate all loan requests of entities in that State to determine the loan amount for each applicant.

4. Capital Costs Criteria

Section 1897 of the Act provides for making loans to a qualified hospital to pay for the capital costs of projects. Projects are defined as those designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements. Therefore, the capital costs for which a qualifying hospital may obtain funds under the loan program will be based on the reasonable costs incurred by the hospital. In addition, the capital costs are to be appropriately capitalized on the Medicare cost report, for any facility or item of equipment that it has acquired the possession or use of at the time of application for the loan program. In determining the reasonableness of the amount of the loan for any particular facility or item for purposes of the loan program, the hospital and CMS will follow Medicare reasonable cost principles as specified in Medicare regulations and program operating instructions. Payment based on reasonable cost principles is a long-standing and established methodology used by Medicare and we believe it is appropriate to apply it to the loan program.

Accordingly, a qualifying hospital that has acquired or built a facility and/or has acquired equipment as an eligible project defined at § 505.3 and the acquisition costs of the asset(s) are appropriately reported on its Medicare cost report following Medicare reasonable cost principles, could apply for a loan not to exceed the net book value of the asset(s) as of the date of its application to CMS for the loan program. Since CMS has been directed to implement section 1897 of the Act, we believe that it is appropriate to apply the standard Medicare interest rate specified in 45 CFR 30.13(a), established by the Secretary of the Treasury, and published quarterly in the **Federal Register**, which we use for our Medicare program, to the loan program.

Alternatively, if a qualifying hospital had not acquired the possession or use of the asset(s) by the date of the application for the funds available under the loan program, the reasonable cost of the asset(s) could nevertheless be the basis for the hospital to apply for funds available under the loan program if the hospital has entered into a contractual obligation via a binding written agreement before December 8, 2003 (the date of enactment of the

MMA) in order to ensure that the funds are being used in accordance with the program.

The amount of the loan cannot exceed the cost of the asset as of the date the application is due to CMS September 30, 2005 based on the cost in the binding written agreement and following Medicare reasonable cost principles.

E. Terms of the Loan Program

In § 505.7, we set forth the ''terms and conditions'' of the loan program.

In order to be awarded funds under the loan program, a participating entity must meet the criteria of a qualified hospital or entity as specified in § 505.3.

1. Loan Obligation (§ 505.7(a))

An authorized official of each qualifying hospital must execute a promissory note, loan agreement, or any other approved form that we may designate, to ensure compliance with the terms of the loan program.

2. Schedule of Loan (§ 505.7(b))

Each loan recipient will receive a lump sum distribution for which payment of principal and interest is deferred for 60 months beginning with the day we notify the qualifying hospital of award notification. The loan repayment period is 20 years. However, the loan recipient must agree to furnish to us cancer care data during the deferment period.

3. Bankruptcy Protection (§ 505.7(c))

In the event a loan recipient should file for bankruptcy protection in a court of competent jurisdiction or should otherwise evidence insolvency, we may terminate the deferment and require immediate payment of the loan. If a loan recipient should file for bankruptcy protection in a court of competent jurisdiction or should otherwise evidence insolvency after the deferment period we will require immediate repayment of the outstanding principal and interest due. Those payments may be deducted from any Medicare payments otherwise due that hospital.

4. Loan Forgiveness (§ 505.7(d))

As previously mentioned, we are publishing a separate rule making document regarding the forgiveness of indebtedness in which we will propose criteria as specified in the statute.

5. Default (§ 505.7(e))

Additionally, if a loan recipient fails to make any payment in repayment of a loan under the loan program within 10 days of its due date, the loan recipient may be considered in default on the loan. Under the Federal Debt Collection Act, upon default, all principal and interest become due immediately, and we reserve the right to collect on any remaining principal and interest due. Those payments may be deducted from any Medicare payments otherwise due that hospital.

F. Loan Repayment (§ 505.7(f))

The loan recipient agrees to make payments every month for 20 years until the loan, including interest, is repaid. For qualifying hospitals that are ineligible for loan forgiveness, payments are due starting on the first day of the next month following the deferment period. Payments will be made monthly until all of the principal and interest owed are paid in full. Interest will be charged on the unpaid principal until the full amount of principal has been paid. A loan recipient will pay interest at a yearly rate based upon the rate as fixed by the Secretary of the Treasury which is published quarterly in the **Federal Register** as specified in 45 CFR 30.13(a). Payments must be mailed to: CMS/Division of Accounting Operations, P.O. Box 7520, Baltimore, MD 21207–0520.

G. Payments

1. Interest Rate and Monthly Payment Changes (§ 505.7(g))

The regulations in 42 CFR part 405 subpart C provide authority for us to collect interest on certain payments. Therefore, to the extent that payments are due, we are establishing that interest charges and payments be made consistent with § 405.378.

2. Loan Recipient's Right To Prepay (§ 505.7(h))

A loan recipient has the right to make payments of principal at any time before they are due. A payment of principal only is known as a ''prepayment.'' A loan recipient may make full prepayment or partial prepayment without paying any prepayment charge. When a prepayment is made, the qualifying hospital must provide us with written notice.

H. State and Local Permits (§ 505.9)

In § 505.9, we set forth the ''State and local permit'' requirements. Consistent with section 1897 of the Act, the entity must agree to the following terms and conditions: The provision of a loan under section 1897 shall not—

- Relieve the hospital of any obligation to obtain any required State or local permit or approval with respect to the project;
- Limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or
- Otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule before the effective date of the rule. This procedure can be waived, however, when an agency finds good cause that a notice and comment procedure is impracticable, unnecessary or contrary to the public interest. We find good cause to implement this rule as an interim final rule because the delay involved in the prior notice and comment procedure for the loan program for the infrastructure for cancer centers would be impracticable and contrary to the public interest.

The Congress enacted section 1897 of the Act to provide a loan program for a qualifying hospital to improve the health care infrastructure of the hospital. The program is designed to enable a number of cancer hospitals to expand or improve their healthcare infrastructure, develop enhanced capacity and research resources, and serve the medical needs of their populations. We believe that it is not in the public interest to delay the loan program and prevent the affected parties from having access to such services.

The Congress provided $142,000,000 for the loan program effective July 1, 2004 through September 30, 2008, and not more than $2,000,000 may be used for the administration of the loan program for each of the fiscal years (that is, 2004 through 2008).

These legislative changes demonstrate that the Congress has concerns about the improvement of the cancer-related health care hospital infrastructure in the United States. As specified in section 1897(c)(2) of the Act, in order to receive funds under the loan program, an applicant entity is required to—(1) be engaged in research into the causes, prevention, and treatment of cancer; (2) be designated as a cancer center for the

NCI, or be designated by the State legislature as the official cancer institute of the State before December 8, 2003. Delay in issuing this interim final rule with comment period could hinder our programmatic objective of improving cancer care and outreach, particularly with respect to the residents in rural areas, and Indian tribes. For example, this interim final rule with comment period provides funding to hospitals in rural areas that engage in research in the causes, prevention, and treatment of cancer and that establish an outreach program for cancer prevention, early diagnosis, and treatment. Beneficiary access to quality cancer care in underserved or rural areas is a critical programmatic objective. It is not in the public interest to delay finalizing this loan program which is designed to serve this purpose.

The Congress further indicated that the selection criteria for making loans consider the extent of medical benefit gained from projects to expand or improve the health care infrastructure for which this loan program is intended. The funds made available to improve that infrastructure are only available for a time-limited period (ending September 30, 2008) and nearly 1 year has passed since those funds were first made available. It would be impracticable and contrary to the public interest to issue a proposed rule and further delay access to these time-limited funds.

In accordance with the foregoing, we believe that it would be impracticable and contrary to the public interest to delay implementation of the loan program pending the process of publishing both a proposed rule and a final rule. Publishing these provisions in an interim final rule with comment period will give the public an opportunity to submit comments. Publication of this interim final rule with comment period will serve the public interest by ensuring that providers have access to funds, and that beneficiaries, Indian tribes, and residents of rural areas have access to improved cancer outreach services, as expeditiously as possible, consistent with Congressional intent. Therefore, in order to establish the loan application process and selection criteria to award the funds of the time-limited loan program, we find good cause to waive proposed rulemaking for the revised requirements set forth under the Administrative Procedure Act (5 U.S.C. 553(b))and to issue these regulations in final. However, we are providing a 60 day period for public comment, as indicated at the beginning of this rule.

V. Collection of Information Requirements

The collection of information requirements at 5 CFR 1320 are applicable to requirements affecting 10 or more entities. While this regulation contains information collection requirements, because we believe that these requirements will affect less than 10 entities, we believe that these collection requirements are exempt from OMB for review and approval, as specified at 5 CFR 1320.3(c)(4). Consequently, this rule does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This interim final rule with comment period is a major rule in which $142 million is appropriated to carry out the Health Care Infrastructure Improvement Program.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all hospitals are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $26 million or less in any 1 year (for further information, see the Small Business Administration's regulation at 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. This interim final rule with comment period affects qualifying hospitals as defined by section 1897 as—(1) a hospital or entity as defined in § 505.3 that is engaged in research in the causes, prevention, and treatment of cancer; and (2) designated as a cancer center for the National Cancer Institute (NCI) or is designated by the State legislature as the official cancer institute of the State and such designation by the State legislature occurred before December 8, 2003. We believe a total of 61 facilities meet the definition of qualifying hospitals as specified in § 505.3 (that is, 60 NCI cancer centers and 1 State legislature designated cancer institute).

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. None of the 61 eligible facilities that we have identified are rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This interim final rule with comment period does not mandate any requirements for State, local, or tribal governments, nor will it result in expenditures by the private sector of $120 million in any 1 year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As specified in section 1897 of the Act, no provisions under the loan program will relieve an obligation of State, local permits or limit or otherwise supersede any State or local law.

B. Anticipated Effects

1. Effects on Hospitals

The provisions of this interim final rule with comment period are limited to qualifying hospitals. Only 61 facilities

meet the definition of qualified hospitals as specified in § 505.3. Since the capital costs of projects which the loan program is designed to pay for are likely to be substantial and expensive, we expect only a small percentage of the 61 eligible facilities will actually be granted loans under this provision before the funds are exhausted. For the few qualifying hospitals that will receive funds under the loan program, we expect they will use the money on projects that are designed to improve the healthcare infrastructure of the hospital including construction, renovation, or other capital improvements and which would result in better facilities in which to provide cancer care to our beneficiaries. However, we believe that the effect will be limited to those few qualifying hospitals that will receive loan funds. Thus, the provisions in this IFC will not have a significant economic impact on a substantial number of hospitals.

2. Effects on the Medicare and Medicaid programs

This interim final rule with comment period will have little impact on the Medicare trust fund. The Congress provided $142,000,000 for the loan program effective July 1, 2004 through September 30, 2008, and not more than $2,000,000 may be used for the administration of the loan program for each of the fiscal years (that is, 2004 through 2008).

C. Alternatives Considered

We considered no alternatives to the policies in this interim final rule with comment period since the statute authorizes the establishment of these policies.

D. Conclusion

For these reasons, we are not preparing further analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 505

Administrative practice and procedure, Health facilities, Loan programs, Infrastructure improvement program, Reporting and recordkeeping, and Rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV by adding a new subchapter H (consisting of a new part 505) to read as follows:

SUBCHAPTER H—HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM

PART 505—ESTABLISHMENT OF THE HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM

Subpart A—Loan Criteria

Secs.

Subpart B—[Reserved]

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C 1302 and 1395hh).

Subpart A—Loan Criteria

§ 505.1 Basis and scope.

This part implements section 1016 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) which amends section 1897 of the Act. Section 1897 of the Act as amended by section 6045 of the Tsunami Relief Act of 2005 authorizes the Secretary to establish a loan program by which qualifying hospitals may apply for a loan for the capital costs of the health care infrastructure improvement projects. Section 1897 of the Act appropriates $142,000,000 for the loan program including program administration. The funds are available beginning July 1, 2004 through September 30, 2008. This part sets forth the criteria that CMS uses to select among qualifying hospitals.

§ 505.3 Definitions.

For purposes of this subpart, the following definitions apply:

Eligible project means the project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

Entity is an entity described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of the code. An entity must also have at least one existing memorandum of understanding or affiliation agreement with a hospital located in the State in which the entity is located and retains clinical outpatient treatment for cancer on site as well as laboratory research, education, and outreach for cancer in the same facility.

Qualifying hospital means a hospital as defined at section 1861(e) of the Act (42 U.S,C. 1395x(e)) or an entity (as defined in this section) that is engaged in research in the causes, prevention, and treatment of cancer; and is either designated as a cancer center for the National Cancer Institute; or designated by the State legislature as the official cancer institute of the State before December 8, 2003.

§ 505.5 Loan criteria.

(a) *Qualifying criteria.* To qualify for the loan program, the applicant must meet the following conditions:

(1) Meet the definition of a ''qualifying hospital'' as set forth in § 505.3 of this part.

(2) Request a loan for the capital costs of an ''eligible project'' as defined in § 505.3 of this part. The capital costs for which a qualifying hospital may obtain a loan are limited to the reasonable costs incurred by the hospital, and capitalized on the Medicare cost report, for any facility or item of equipment that it has acquired the possession or use of at the time the loan funding is awarded.

(b) *Selection criteria.* In selecting loan recipients, CMS prioritizes qualifying hospitals that meet the following criteria:

(1) The hospital is located in a State that, based on population density, is defined as a rural State. A rural State is one of ten States with the lowest population density. An applicant entity is required to be located in one of these ten States. The ten States are prioritized beginning with the State with the lowest population density. Population density is determined based on the most recent available U.S. Census Bureau data.

(2) The hospital is located in a State with multiple Indian tribes in the State. After prioritizing based on paragraph (b)(1) of this section, States are further prioritized based on the States with the most Indian tribes. The number of Indian tribes in a State is based on the most recent data available published in ''Indian Entities Recognized and Eligible to Receive Services from the United State Bureau of Indian Affairs.'' (68 FR 68180) published on December 5, 2003.

(c) CMS will send written notice to qualifying hospitals that have been selected to participate in the loan program under this part.

§ 505.7 Terms of the loan.

All loan recipients must agree to the following loan terms:

(a) *Loan obligation.* An authorized official of a qualifying hospital must execute a promissory note, loan agreement, or a form approved by CMS and accompanied by any other

documents CMS may designate. The loan recipient must provide required documentation in a timely manner.

(b) *Schedule of loan.* A loan recipient receives a lump sum distribution for which payment of principal and interest is deferred for 60 months beginning with the day of award notification from CMS. The loan repayment period is 20 years.

(c) *Bankruptcy protection.* In the event a loan recipient files for bankruptcy protection in a court of competent jurisdiction or otherwise proves to be insolvent, CMS may terminate the deferment period described in paragraph (b) of this section and require immediate payment of the loan. If a loan recipient should file for bankruptcy protection in a court of competent jurisdiction or should otherwise evidence insolvency after the deferment period we will require immediate repayment of the outstanding principal and interest due. Those payments may be deducted from any Medicare payments otherwise due that hospital.

(d) *Loan forgiveness.* CMS does not require a loan recipient to begin making payments of principal or interest at the end of the 60-month deferment period if it determines that the loan recipient meets the criteria for loan forgiveness under section 1897 of the Act, as determined by the Secretary.

(e) *Default.* If a loan recipient fails to make any payment in repayment of a loan under this subpart within 10 days of its due date, the loan recipient may be considered to have defaulted on the loan. Upon default, all principal and accrued interest become due immediately, and CMS may require immediate payment of any outstanding principal and interest due. Those payments may be deducted from any Medicare payments otherwise due that hospital.

(f) *Loan repayment.* The loan recipient must meet the following conditions:

(1) Make payments every month for 20 years until the loan, including interest payments, are paid in full.

(2) Pay interest on the unpaid principal until the full amount of principal has been paid.

(3) Pay interest at a yearly rate based upon the rate as fixed by the Secretary of the Treasury and set forth at 45 CFR 30.13(a).

(4) If a loan recipient fails to make any payment in repayment of a loan under this subpart within 10 days of its due date, that payment may be deducted from any Medicare payments otherwise due to the recipient.

(g) *Interest rate and monthly payment charges.* CMS calculates interest charges and payments consistent with § 405.378 of this chapter.

(h) *Loan recipient's right to prepay.* A loan recipient has the right to make payments of principal at any time before they are due. A loan recipient may make full prepayment or partial prepayment without paying any prepayment charge. If a prepayment is made, the loan recipient must provide written notice to CMS at CMS, Division of Accounting Operations, P.O. Box 75120, Baltimore, MD 21207–0520.

§ 505.9 State and local permits.

With respect to an eligible project, the provision of a loan under this part shall not—

(a) Relieve the recipient of the loan or any obligation to obtain any required State or local permit or approval with respect to the project.

(b) Limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project.

(c) Supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

§ 505.11 Loan application requirements and procedures.

(a) The loan application must be received by CMS no later than 5 p.m. e.d.t. on December 29, 2005.

(b) The requested information must be typed or clearly printed in ink and the loan recipient must mail or deliver an original copy of the loan to CMS. The loan application must contain the following information:

(1) Qualifying hospital's name and street address.

(2) Qualifying hospital's Medicare provider number.

(3) Name, title, and telephone number of a contact person submitting the application.

(4) Provide all appropriate supporting documentation for each answer made on the loan application.

Subpart B—[Reserved]

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

Dated: June 28, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 3, 2005.

Michael O. Leavitt,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 Part CFR 505

[CMS–1320–P]

RIN 0938–AN93

Medicare Program; Health Care Infrastructure Improvement Program; Forgiveness of Indebtedness

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 1016 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) by establishing the loan forgiveness criteria for qualifying hospitals who receive loans under the Health Care Infrastructure Improvement Program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 29, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1320–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1320–P, P.O. Box 8020, Baltimore, MD 21244–8020.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786–4487 (For information on the loan terms).

Melinda Jones (410) 786–7069 (For information on loan forgiveness criteria).

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed rule to assist CMS in fully considering issues and developing policies. You can assist CMS by referencing the file code CMS–1320–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 1016 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended Title XVIII of the Social Security Act (the Act) to establish section 1897 of the Act, the Health Care Infrastructure Improvement Program (Loan Program). Section 1897 of the Act authorizes the Secretary of the U.S. Department of Health and Human Services (Secretary) to establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of eligible projects.

Section 1897(c) as amended by Section 6045 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Tsunami Relief Act of 2005) (Pub. L. 109–13) defines a qualifying hospital as a hospital or entity that is engaged in research in the causes, prevention, and treatment of cancer; and is designated as a cancer center by the National Cancer Institute (NCI) or is designated by the State legislature as the official cancer institute of the State and such designation by the State legislature occurred prior to December 8, 2003. Section 1897(c)(3) of the Act also specifies that an entity has the same meaning as specified in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under section 501(a) of the Code; has at least one existing memorandum of understanding or affiliation agreement with a hospital located in the State in which the entity is located; and retains clinical outpatient treatment for cancer on site as well as lab research and education and outreach for cancer in the same facility.

Section 1897(d) of the Act specifies that an eligible project is a project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

Section 1897(f) of the Act states that the Secretary may forgive a loan provided to a qualifying hospital, under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965, (20 U.S.C.1087a *et seq.*). However, the Secretary shall condition such forgiveness on the establishment by the hospital of—(1) An outreach program for cancer prevention, early diagnosis and treatment that provides services to a substantial majority of the residents of the State or region, including residents of rural areas; (2) an outreach program for cancer prevention, early diagnosis,

and treatment that provides services to multiple Indian Tribes; and (3) unique research resources (such as population databases); or an affiliation with an entity that has unique research resources.

Also, section 1897(h) of the Act states that the Secretary shall submit to Congress a report on the projects for which loans are provided under this section and a recommendation as to whether Congress should authorize the Secretary to continue loans under this section beyond fiscal year 2008.

Furthermore, prior to the Tsunami Relief Act of 2005, section 1897(g)(1) of the Act appropriated $200,000,000 to carry out the loan program. The funds allocated for the loan program are to remain available during the period beginning on July 1, 2004, and ending on September 30, 2008. However, the Congress rescinded $58,000,000 leaving $142,000,000 available for the loan program. The statute also states that not more than $2,000,000 can be used for the administration of the loan program for each of the fiscal years (that is, 2004 through 2008). No administrative funding was used in fiscal year 2004.

In addition, section 1897(i) of the Act as amended by section 6045(b) of the Tsunami Relief Act of 2005 states that there shall be no administrative or judicial review of any determination made by the Secretary under this section.

II. Provisions of the Proposed Regulation

Section 1897 of the Act authorizes the Secretary to establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of qualifying projects. Section 1897 of the Act also requires that criteria be established for—(1) selecting among qualifying hospitals that apply to participate in the loan program; and (2) the forgiving of indebtedness (hereinafter referred to as loan forgiveness). This proposed rule would establish the loan forgiveness criteria for qualifying hospitals that participate in the loan program. We are publishing a separate rulemaking document for selecting qualifying hospitals to participate in the Health Care Infrastructure Improvement program (loan program).

A. Conditions for Loan Forgiveness (Proposed § 505.13)

[If you choose to comment on issues in this section, please include the caption ''Conditions for Loan Forgiveness'' at the beginning of your comments.]

Section 1897(f) of the Act authorizes the Secretary to forgive a loan provided to a qualifying hospital under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965 [20 U.S.C. 1087a *et seq.*). The student loan program specifies that in order to be eligible for loan forgiveness, borrowers are required to satisfy certain conditions, such as, completing a service obligation which satisfies certain terms and conditions as determined by the Secretary. Therefore, we propose to apply the loan forgiveness model of the student loan program and require that a hospital complete a service obligation which satisfies certain terms and conditions in order to qualify for loan forgiveness. That is, we are proposing that to fulfill the service obligation borrowers must meet the loan forgiveness conditions discussed herein that are based on section 1897(f) of the Act which states that the Secretary shall condition such forgiveness on the establishment by the hospital of—(1) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas; (2) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and (3) unique research resources (such as population databases); or an affiliation with an entity that has unique research resources.

In addition, we are proposing that the qualifying hospital must submit a written request for loan forgiveness to CMS by the effective date of the final rule.

Furthermore, we are proposing specific criteria that a qualifying hospital must follow to meet the conditions for loan forgiveness.

B. Plan Criteria for Meeting the Conditions for Loan Forgiveness (Proposed § 505.15)

[If you choose to comment on issues in this section, please include the caption ''Criteria for meeting the conditions for loan forgiveness'' at the beginning of your comments.]

In order to qualify for loan forgiveness, the qualifying hospital must meet the specific criteria proposed at § 505.13. We would organize the loan forgiveness criteria into 3 domains. These domains are consistent with the section 1897(f)(A),(B), and (C) of the Act. The three proposed domains are—(1) Outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas; (2) outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and (3) unique research resources (such as population databases); or an affiliation with an entity that has unique research resources.

In proposed § 505.3, we would define ''outreach programs'' as formal cancer programs for teaching, diagnostic screening, therapy or treatment, prevention, or interventions to enhance the health and knowledge of their designated population(s). Likewise, we are proposing to define ''unique research resources'' as resources that are used for the purpose of discovering or testing options related to the causes, prevention, and treatment of cancer. We are soliciting comments on these definitions.

We are proposing at § 505.13(c) that the qualifying hospital must submit to CMS by the timeframe specified by the Secretary the following: (1) A written request for loan forgiveness; (2) a plan describing how the qualifying hospital would establish, implement or maintain existing outreach programs for its targeted populations; and (3) how it would establish or maintain existing unique research resources over the loan deferment period. We propose to make that timeframe 60 days after the publication of the final rule.

We are also proposing in § 505.15 that the qualifying hospital designate in its plan, the population(s) for which it would target its outreach programs and be held accountable in the assessment for loan forgiveness. The qualifying hospital's target populations for the outreach programs must include a substantial majority of the residents of a State or region, including residents of rural areas and multiple Indian tribes that the qualifying hospital services. We are proposing that the qualifying hospital must describe how it would designate the targeted populations to include residents of rural areas. CMS also proposes that for a list of Indian tribes eligible for inclusion in the target population, qualifying hospitals would refer to the notice on ''Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.'' The most recent notice was published in the **Federal Register** on December 5, 2003 (68 FR 68180). Qualifying hospitals should use this list when designating the target population for outreach programs servicing multiple Indian tribes in its plan to CMS.

We invite public comments on the type of information that must be included in the plan and the timeframe

for a qualifying hospital to submit its plan to CMS. We are also soliciting comments on whether we should provide more specific criteria for the qualifying hospital to use in defining its targeted populations.

We believe that 60 days after the final rule publication date is reasonable time for qualifying hospitals intending to apply for loan forgiveness to prepare and submit their initial plan, since the loan deferment period is 60 months after notification of acceptance in the program and the qualifying hospital would be assessed on its performance during the loan deferment period.

Furthermore, we believe that requiring the qualifying hospitals to submit a plan in which they would determine the targeted population, the types of cancers (that is, the cancer types to be considered), goals for improving prevention, diagnosis, and treatment, and the measures to track their progress in reaching the goals provides flexibility to the qualifying hospitals as they develop, implement, or maintain their outreach programs.

We also believe that it is appropriate to request this level of detail from the qualifying hospitals because section 1897(h) of the Act requires the Secretary to submit a report to the Congress before fiscal year 2008. The report must indicate the projects for which loans are provided under this section and recommend whether the Congress should authorize the Secretary to continue loans under beyond fiscal year 2008. Receiving this information from the qualifying hospitals is necessary for the Secretary to make a fully informed recommendation to the Congress.

1. Domain 1: Outreach Program That Services a Substantial Majority of the Residents of a State or Region, Including Residents of Rural Areas

We are proposing that the qualifying hospitals plan include a description of how it would establish, develop, implement, or maintain an existing outreach program that services a substantial majority of the residents of a State or region, including residents of rural areas for cancer prevention, early diagnosis, and treatment over the loan deferment period including proposed intervention approaches. The plan must—(1) identify the target population in accordance with section 1897(f)(A) of the Act; (2) identify the cancer type(s) that would be included in the outreach program and how they were determined; (3) describe the intervention approaches it would consider using in its outreach program; (4) propose goals for improvement in each of the three areas (that is, prevention, early diagnosis, and treatment) during the loan deferment period for each cancer type identified; and (5) identify measures that would be used to track annual progress in meeting the proposed goals in the three areas for each cancer type identified.

2. Domain 2: Outreach Program That Services Multiple Indian Tribes

We are proposing that the qualifying hospitals plan include a description of how it would establish or develop, implement, or maintain an existing outreach program that services multiple Indian Tribes for cancer prevention, early diagnosis, and treatment over the loan deferment period including proposed intervention approaches. The plan must—(1) designate the target population using the notice on ''Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs'' published in the **Federal Register** on December 5, 2003 (68 FR 68180), in order to meet the requirements at section 1897(f)(B) of the Act; (2) identify the cancer type(s) that would be included in the outreach program and how they were determined; (3) describe the intervention approaches it would consider using in its outreach program; (4) propose goals for improvement in each of the three areas (that is, prevention, early diagnosis, and treatment) during the loan deferment period for each cancer type identified; and (5) identify measures that would be used to track annual progress in meeting the proposed goals in the three areas for each cancer type identified.

3. Domain 3: Unique Research Resources or an Affiliation With an Entity That Has Unique Research Resources

We are proposing that the qualifying hospital would describe in its plan how it would establish or maintain existing unique research resources or an affiliation with an entity that has unique research resources and what those unique resources are.

C. Proposed Plan Criteria

1. Targeted Population

For targeting multiple Indian tribes, we are proposing that qualifying hospitals refer to the notice on ''Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.'' The most recent notice was published in the **Federal Register** on December 5, 2003 (68 FR 68180). Qualifying hospitals would use this list when designating the target population for outreach programs servicing multiple Indian tribes since these are the Indian tribes that have unique legal status under Federal law.

For other target populations, we are not proposing how the qualifying hospital should determine or designate the population as long as it encompasses a substantial majority of the residents of a State or region, including residents of rural areas that it services. We believe that the qualifying hospital is in the best position to designate the targeted populations for their outreach programs to the substantial majority of residents and to rural areas. We believe that allowing the qualifying hospital to designate its populations provides flexibility over the life of the loan deferment period as its populations change due to results from its outreach programs, treatment services, or other reasons. However, we are proposing that the qualifying hospital provide sufficient detail in its initial plan to clearly describe how it designated its targeted populations and that the populations designated should be in accordance with the provisions of the statute. The qualifying hospital should include in the plan such details as demographic information for the targeted population generally and some initial estimates of relevant rates of diagnosis of and death from cancers prevalent in its population(s).

2. Identification of the Cancer Types

In this proposed rule, we are not proposing specific cancers (or the number of cancer types) that the qualifying hospital must focus on in its outreach programs. Again, we believe that the qualifying hospital is in the best position to determine the types of cancer to target in its outreach programs and that allowing the qualifying hospital to determine the cancer types provides flexibility over the life of the loan deferment period as the population changes or cancer prevention and treatment services improve. However, we are proposing that the qualifying hospital provides sufficient detail in its initial plan to clearly describe how it would identify the cancer types that it is targeting. The reasons for selecting specific cancers may include such things as high prevalence or incidence, high mortality or morbidity, easily treatable, available screening techniques, and easily diagnosed. The four most common cancers—prostate, breast, lung, and colon/rectum—accounted for more than half of all new cases of cancer in 1998 and qualifying hospitals may wish to target these cancers in their outreach programs. [National Cancer Policy Board (IOM). Ensuring Quality Cancer Care.

Washington DC: National Academy Press, 1999]

3. Intervention Approaches

In this propose rule, we are not mandating specific intervention approaches that the qualifying hospital must conduct in its outreach programs. We believe that the qualifying hospital is in the best position to determine the types of interventions to implement based on its target population and the types of cancers included in its outreach programs. We believe that allowing the qualifying hospital to determine its specific interventions provides flexibility to the qualifying hospital to try different approaches over the life of the loan deferment period. However, we are proposing that the qualifying hospital provide sufficient detail in its initial plan and subsequent progress reports to clearly describe the approaches it will be conducting or implementing, including the reasons why the intervention approaches were selected and why they may make a difference in improving cancer care for the targeted population.

4. Goals for Improvement

We are proposing in § 505.15 that the qualifying hospital include in its plan, improvement goals for the prevention, early diagnosis, and treatment, for each cancer type identified in its outreach programs. The qualifying hospital must work towards these goals during the loan deferment period. We believe that it is important to establish goals for improving performance over the loan deferment period as one way to document the potential impact of its outreach programs on improvement in the care provided to the targeted populations. This would help the qualifying hospital determine if its outreach programs are getting the desired results.

As previously indicated, we are not proposing specific goals for the qualifying hospital to achieve. However, we are proposing that the qualifying hospital must determine its own improvement goals for each cancer type (that is for the prevention, early diagnosis, and treatment). We believe that it is important for the qualifying hospital to determine its own goals because it is in the best position to know or understand the various factors or barriers in its population (community) that may influence the achievement of the goals and work towards overcoming them. For example, if the qualifying hospital selects breast cancer as one of the cancer types it would focus on for the designated population, the qualifying hospital may select a goal of decreasing the number of new initial breast cancer diagnosis or cases by 10 percent from the previous year (a prevention goal), or select a goal of increasing the number of mammograms performed by 10 percent from the previous year (an early diagnosis goal), or select a goal of increasing the number of patients who receive their first treatment after initial diagnosis within the time period specified by the appropriate clinical practice guidelines (a treatment goal). We understand that there are many factors to take into account when selecting goals, but we believe that it is important for the qualifying hospital to work towards established goals so that it can determine if its outreach programs are having the desired effect and changes to its outreach approaches can be made as needed.

5. Measures

We are proposing in § 505.17 that the qualifying hospital include in its initial plan at least one measure (for example, either an outcome measure or a process measure) used to track its progress in achieving the goals it has established for each area of prevention, early diagnosis, and treatment, for each cancer type identified in its plan. We are not proposing the specific measures that the qualifying hospital should track because we believe that the qualifying hospital is in the best position to determine the appropriate measures. Furthermore, we believe that it provides flexibility and allows the goals to be revised because of various factors or barriers (for example, community) that may influence the achievement of the goal to have changed. For example, if the qualifying hospital identifies lung cancer as one of the cancer types it would focus on for the designated population, the qualifying hospital may select the percent of patients enrolled in smoking cessation sessions and who quit smoking for 1 year or more as a measure to track its prevention goal. The qualifying hospital may select the percent of patients at high risk for developing lung cancer who receive a screening test as a measure to track its early diagnosis goal, and it may select the percent of patients who were initially diagnosed with lung cancer and received the appropriate treatment timely to track its treatment goal. The goal that is selected should drive what measure is selected for tracking the goal, such as goals for early diagnosis and treatment.

6. Unique Research Resources

We are proposing in § 505.15(b) that the qualifying hospital include in its plan a description of how it would establish or maintain existing unique research resources or how it would establish or maintain an existing affiliation with another entity that has unique research resources. Examples of unique research resources are a population database, a cancer biomedical informatics system, a surveillance system for observing or measuring cancer incidence, morbidity, survival, and/or mortality, an epidemiology study, an end results database, or a tumor registry. We are soliciting comments on other unique research resources that may be available.

D. Reporting Requirements for Meeting the Conditions for Loan Forgiveness (Proposed § 505.17)

[If you choose to comment on issues in this section, please include the caption ''Reporting Requirements'' at the beginning of your comments.]

We are proposing that the qualifying hospital must submit annual progress reports to CMS describing its progress in achieving its plan or any changes to the initial plan. We would review the annual progress reports and provide feedback to the qualifying hospital, so that it is aware of its loan forgiveness status during the loan deferment period.

Annual progress reports from the qualifying hospital would allow us to monitor the qualifying hospitals performance in meeting the conditions for loan forgiveness during the loan deferment period. We intend to monitor the qualifying hospitals' performance during the entire loan deferment period to ensure that these qualifying hospitals meet the conditions for loan forgiveness. We would require qualifying hospitals to submit the final progress report to us 6 months before the end of the loan deferment period. At that time, we would determine whether the qualifying hospital has met the loan forgiveness conditions. We are proposing this timeframe since determinations of loan forgiveness must be made at the end of 5 years.

E. Approval or Denial of Loan Forgiveness (Proposed § 505.19)

[If you choose to comment on issues in this section, please include the caption ''Approval or Denial of loan forgiveness'' at the beginning of your comments.]

We are proposing that if a qualifying hospital meets the conditions, plan criteria, and reporting requirements for loan forgiveness specified in § 505.13, § 505.15, and § 505.17, the loan would be forgiven. Therefore, we would send

written notification for the loan forgiveness approval to the loan recipient 90 days before the end of the loan deferment period. We are proposing that if the loan recipient does not meet the conditions, plan criteria, or reporting requirements for the loan forgiveness specified in § 505.13, § 505.15, and § 505.17, we would send written notification for the denial of the loan forgiveness.

III. Collection of Information Requirements

The collection of information requirements at 5 CFR part 1320 are applicable to requirements affecting 10 or more entities. While this proposed rule contains information collection requirements, because we believe that these requirements would affect less than 10 entities, we believe that these collection requirements are exempt from OMB for review and approval, as specified at 5 CFR 1320.3(c)(4). Consequently, this proposed rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble. Thus, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is not a major rule because it does not have an effect of more than $100 million in any 1 year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all hospitals are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $26 million or less in any 1 year (for further information, see the Small Business Administration's regulation at 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. This proposed rule affects qualifying hospitals as defined by section 1897 of the Act that have been selected to receive funds under the loan program. We believe a total of 61 facilities meet the definition of qualifying hospitals under section 1897 of the Act (that is, 60 NCI cancer centers and 1 State legislature designated cancer institute, but only a few hospitals would actually be selected to receive funds under the loan program and be eligible for loan forgiveness).

In addition, section 1102(b) of the Act requires CMS to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. None of the eligible facilities are small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule who mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of $120 million in any 1 year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Section 1897 of the Act directly specifies that no provisions under the Program implemented by this proposed rule would relieve an obligation of State and local permits or limit or otherwise supersede any State or local law.

B. Anticipated Effects

1. Effects on Hospitals

The provisions of this proposed rule are limited to qualifying hospitals that have received funds under the loan program and are eligible for loan forgiveness. Only 61 facilities would meet the definition of qualified hospitals as required by section 1897 of the Act. Since the capital costs of projects which the loan program is designed to pay for are likely to be substantial and expensive, we expect only a small percentage of the 61 eligible facilities would actually be granted loans under this provision before the funds are exhausted and therefore be eligible for loan forgiveness. For the few qualifying hospitals that would receive funds under the loan program, we expect they would use the money on projects that are ''designed to improve the healthcare infrastructure of the hospital including construction, renovation, or other capital improvements'' and which would result in better facilities in which to provide cancer care to our beneficiaries. To qualify for loan forgiveness, the qualifying hospitals must meet the conditions specified in section 1897(f) of the Act, which we believe would positively impact the cancer care our beneficiaries receive. As well, the qualifying hospitals would realize a benefit when their loans are forgiven. However, we believe that the effect would be limited to those few qualifying hospitals that have received loan funds and are eligible for loan forgiveness. Thus, the provisions in this proposed rule would not have a significant economic impact on a substantial number of hospitals.

2. Effects on the Medicare and Medicaid Programs

The $142 million in available loan funds is appropriated for the loan program and not more than $2,000,000 may be used for the administration costs of the loan program.

C. Alternatives Considered

We considered no alternatives to the policies in this proposed rule since the statute authorizes the conditions under which the Secretary may forgive a loan provided under the Health Care Infrastructure Improvement Program.

D. Conclusion

For these reasons, we are not preparing further analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 505

Administrative practice and procedure, Health facilities, Loan programs, Infrastructure improvement program, Reporting and recordkeeping, and Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is proposing to amend 42 CFR chapter IV as follows:

SUBCHAPTER H—HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM

PART 505—THE ESTABLISHMENT OF THE HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM

1. The authority citation for part 505 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C 1302 and 1395hh).

2. In 505.3 is amended by republishing the introductory text and adding the following definitions in alphabetical order to read as follows:

§ 505.3 Definitions

For purposes of this subpart, the following definitions apply:

* * * * *

Outreach programs mean formal cancer programs for teaching, diagnostic screening, therapy or treatment, prevention, or interventions to enhance the health and knowledge of their designated population(s).

* * * * *

Unique research resources means resources that are used for the purpose of discovering or testing options related to the causes, prevention, and treatment of cancer.

3. A new Subpart B is added to read as follows:

Subpart B—Forgiveness of Indebtedness

Secs.

Subpart B—Forgiveness of Indebtedness

§ 505.13 Conditions for loan forgiveness.

The Secretary may forgive a loan provided under this part if the qualifying hospital meets the following conditions:

(a) Must be selected to participate in the loan program specified in § 505.5(c) of this part.

(b) Has established the following:

(1) An outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas;

(2) An outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and

(3) Unique research resources (such as population databases) or an affiliation with an entity that has unique research resources.

(c) Submits to CMS within the timeframe specified by the Secretary a—

(1) Written request for loan forgiveness; and

(2) Loan forgiveness plan that meets the criteria specified in § 505.15 of this subpart.

§ 505.15 Plan criteria for meeting the conditions for loan forgiveness.

The qualifying hospital requesting loan forgiveness must submit to CMS a plan specifying how it will develop, implement, or maintain an existing outreach program for cancer prevention, early diagnosis, and treatment for a substantial majority of the residents of a State or region, including residents of rural areas and for multiple Indian Tribes and specifying how the qualifying hospital will establish or maintain existing unique research resources or an affiliation with an entity that has unique research resources.

(a) *Outreach programs.* The initial plan must specify how the hospital will establish or develop, implement, or maintain existing outreach programs. The plan must—

(1) Address cancer prevention for cancers that are prevalent in the designated populations or cancers that are targeted by the qualifying hospital, interventions, and goals for decreasing the targeted cancer rates during the loan deferment program; and

(2) Address early diagnosis of cancers that are prevalent in the designated populations or cancers that are targeted by the qualifying hospital, interventions, and goals for improving early diagnosis rates for the targeted cancer(s) during the loan deferment period;

(3) Address cancer treatment for cancers that are prevalent in the designated populations or cancers that are targeted by the qualifying hospital, interventions, and goals for improving cancer treatment rates for the targeted cancer(s) during the loan deferment; and

(4) Identify the measures that will be used to determine the qualifying hospital's annual progress in meeting the initial goals specified in paragraphs (a)(1) through (a)(3) of this section.

(b) *Unique research resources.* The plan must specify how the qualifying hospital will establish or maintain existing unique research resources or an affiliation with an entity that has unique research resources.

§ 505.17 Reporting requirements for meeting the conditions for loan forgiveness.

(a) *Annual reporting requirements.* On an annual basis, the qualifying hospital must submit a report to CMS that updates the plan specified in § 505.15 of this subpart by—

(1) Describing the qualifying hospital's progress in meeting its initial plan goals;

(2) Describing any changes to the qualifying hospital's initial plan goals; and

(3) Including at least one measure used to track the qualifying hospital's progress in meeting its plan goals.

(b) *Review of annual reports.* CMS will review each qualifying hospital's annual report to provide the hospital with feedback regarding its loan forgiveness status.

(c) *Final reporting requirements.* A qualifying hospital must submit its final written report to CMS 6 months before the end of the loan deferment period specified in § 505.7(b) of this part.

§ 505.19 Approval or denial of loan forgiveness.

(a) *Approval of loan forgiveness.* If a qualifying hospital has met the conditions, plan criteria, and reporting requirements for loan forgiveness specified in § 505.13, § 505.15, and § 505.17 of this part, CMS will send a written notification of approval for loan

forgiveness to the qualifying hospital 90 days before the end of the loan deferment period defined in § 505.7(b) of this part.

(b) *Denial of loan forgiveness.* If a qualifying hospital has not met the conditions, plan criteria, or reporting requirements for loan forgiveness specified in § 505.13, § 505.15, or § 505.17 of this part, CMS will send a written notification of denial for loan forgiveness to the qualifying hospital.

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

Dated: June 28, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 3, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–19307 Filed 9–23–05; 4:00 pm]

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Federal Register

Friday,
September 30, 2005

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2006 State Justice Institute grants, cooperative agreements, and contracts.

DATES: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Kevin Linskey, Executive Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Pending appropriations legislation passed by the House (H.R. 2862) would appropriate $2.0 million to SJI in fiscal year 2006; the Senate-passed version of the bill proposes to appropriate $5.0 million. Additional funds may be made available to SJI either through Congressional action or agreements with the Department of Justice.

Regardless of the final amount provided to SJI for fiscal year 2006, the Institute's Board of Directors intends to solicit project grant applications for certain strategic priorities, discussed further below, to invite selected applicants to apply for grants in key areas, and to continue the most important project grants currently assisting courts nationwide.

Types of Grants Available and Funding Schedules

SJI is offering five types of grants in FY 2006: Project Grants, Continuation Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) grants, and Scholarships.

Project Grants. Project Grants (see sections II.B., III.N., V.B.1., VI.A., VII.B.1., and VIII.A.) are intended to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. As provided in section III.N. of the Guideline, Project Grants may ordinarily not exceed $300,000; however, grants in excess of $200,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

The deadline for submitting a Project Grant application is February 13, 2006. The Board of Directors will meet in May 2006 to approve grant awards. See section VI. for Project Grant application procedures.

Applicants for Project Grants will be required to contribute a cash match of not less than 50% of the total cost of the proposed project, either directly or in cooperation with third parties.

Continuation Grants. Continuation Grants (see sections II.B., III.D., V.B.2., VI.B., VII.B.1., VIII.A., and IX.5.H.1.b.) are intended to enhance the specific program or service begun during an earlier Project Grant period. An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

Applicants for Continuation Grants will be required to contribute a cash match of not less than 50% of the total cost of the ongoing project, either directly or in cooperation with third parties.

Technical Assistance Grants. Section II.C. reserves up to $300,000 for Technical Assistance Grants. Under this program, a State or local court or court association may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by January 6, 2006 will be notified by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified of the Board's decision by December 1, 2006. See section VI.B. for Technical Assistance Grant application procedures.

Judicial Branch Education Technical Assistance Grants. Section II.D. of the Guideline allocates up to $100,000 for grants under the JBE TA grant program this year. Grants of up to $20,000 are available to: (1) enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants.

Applicants submitting letters by January 6, 2006 will be notified by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified of the Board's decision by December 1, 2006. See section VI.D. for JBE TA Grant application procedures.

Scholarships. Section II.E. of the Guideline allocates up to $200,000 for scholarships this year to enable judges and court managers to attend out-of-State education and training programs. A scholarship of up to $1,500 may be awarded to pay for a recipient's tuition, travel, and lodging costs.

Starting this year, scholarships can also be used to cover the costs of enrolling in on-line classes that meet the criteria for acceptable programs as described below.

Scholarships for eligible applicants are approved largely on a ''first come, first served'' basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel.

As before, recipients are limited to no more than one scholarship in a three-year period, unless the course specifically assumes multi-year participation.

Applicants interested in obtaining a scholarship for a program beginning between April 1 and June 30, 2006, must submit their applications and documents between January 2 and February 27, 2006. For programs beginning between July 1 and September 30, 2006, the applications and documents must be submitted between March 30 and May 26, 2006. For programs beginning between October 1 and December 31, 2006, the applications and documents must be submitted between July 3 and August 25, 2006. For programs beginning between January 1 and March 31, 2007, the applications and documents must be submitted between October 2 and

December 1, 2006. See section VI.E. for scholarship application procedures.

Matching Requirements

With the exception of JBE TA grantees and scholarship recipients, all grantees must provide a cash match for any Institute grant. The matching requirements are summarized in sections III.L. and VIII.A.8. of the Guideline.

The following Grant Guideline is adopted by the State Justice Institute for FY 2006:

Table of Contents

I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by a Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

A. Project Grants

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. Though the Board is likely to favor Project Grant applications focused on the Special Interest program categories described below, potential applicants are also encouraged to bring to the attention of the Institute innovative projects outside those categories. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

1. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a Special Interest project if it meets the four criteria set forth above and it falls within the scope of the Special Interest program categories designated below.

The Board has designated the areas set forth below as Special Interest program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Managing Self-Represented Litigation

This category includes research, demonstration, evaluation, and education projects designed to improve the management of self-represented (*pro se*) litigation.

The Institute is particularly interested in supporting innovative projects that:

- Implement the next generation of innovations identified at the Summit on the Future of Self-Represented Litigation held in Chicago in March 2005;
- Compile and disseminate information on promising practices to assist people who come to court without lawyers; and,
- Test and evaluate approaches permitting self-represented litigants to file pleadings, responses, and other forms electronically.

b. Application of Technology in the Courts

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels. The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training

component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, ''untested'' includes novel applications of technology developed for the private sector that have not previously been applied in the courts.

The Institute is particularly interested in supporting efforts to test and evaluate technologies that would:

• Compile promising practices for coordinating and controlling the use of multiple technologies to enhance court processes.

c. Children and Families in Court

This category includes research, demonstration, evaluation, technical assistance, and education projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that would:

• Implement the ''next steps'' identified for courts at the National Leadership Summit for Child Protection held in Minneapolis on September 20–23, 2005.

d. Performance Standards and Outcome Measures

This category includes projects that will develop and measure performance standards and outcomes for all aspects of court operations. The Institute is particularly interested in projects that would:

• Develop and test performance and outcome measures to assess the effectiveness of problem-solving courts.

e. Elder Issues

This category includes research, demonstration, evaluation, and education projects designed to improve management of guardianship, probate, fraud, Americans with Disability Act, and other types of elder-related cases. The Institute is particularly interested in projects that would:

• Develop and evaluate judicial branch education programs addressing elder law and related issues.

f. Relationship Between State and Federal Courts

This category includes research, demonstration, evaluation, and education projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and federal courts and the courts, the legislative and executive branches, and the people. The Institute is particularly interested in projects that would:

• Develop and test materials that judges and court leaders could use to educate community groups and constituencies about the importance of judicial independence.

B. Continuation Grants

This category includes critical SJI-supported Project Grants of proven merit to courts nationwide. These projects must have:

1. Developed products, services, and techniques that may be used in States across the country; and

2. Created and disseminated products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

The application procedures for Continuation Grants may be found in section VI.B.

C. Technical Assistance Grants

The Board is reserving up to $300,000 to support the provision of technical assistance to State and local courts and court associations. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court or court association may apply for a Technical Assistance grant. The application procedures may be found in section VI.C.

D. Judicial Branch Education Technical Assistance Projects

The Board is reserving up to $100,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds. Judicial Branch Education Technical Assistance Grants are limited to no more than $20,000 each.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) are to:

1. Provide State and local courts and court associations with the opportunity to access expert strategic assistance to enable them to maintain judicial branch education programming during the current budget crisis; and

2. Enable courts and court associations to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix C.

Only State or local courts or court associations may apply for JBE TA funding. Application procedures may be found in Section VI.D. Applicants are not required to contribute cash match to JBE TA grants.

E. Scholarships for Judges and Court Managers

The Institute is reserving up to $200,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

1. Enhance the skills, knowledge, and abilities of judges and court managers;

2. Enable State court judges and court managers to attend out-of-State, or to enroll in online, educational programs sponsored by national and State providers that they could not otherwise attend or take online because of limited State, local, and personal budgets; and

3. Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Priority will be given to scholarship applications for attendance at out-of-State educational programs within the United States. Application procedures may be found in Section VI.E.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape or DVD developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the

opening frames of the videotape or DVD identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

B. Application

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed description, not to exceed 25 pages, of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VI. for a complete description of application submission requirements. See Appendix D for the application forms.

C. Close-out

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

D. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VI.B. for a complete description of Continuation Grant application requirements.

E. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

F. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

G. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section VIII.A.11.a.(2) for the precise wording of this statement.

H. Grant Adjustment

A change in the design or scope of a project from that described in theapproved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) must be requested at least 30 days in advance of the implementation of the requested change, except in the most extraordinary circumstances.

I. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

J. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

K. Judicial Branch Education Technical Assistance (JBE TA) Grant

A grant of up to $20,000 awarded to a State or local court or court association to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. See section VI.D. for a complete description of JBE TA Grant application requirements.

L. Match

The portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project or the application of project income (*e.g.*, tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (*e.g.*, advisory board members) working directly on the project or that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

M. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; DVDs; audiotapes; computer software; and CD–ROM disks.

N. Project Grant

An initial grant lasting up to 36 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $300,000 a year; however, a grant in excess of $200,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact.

O. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, see section IX.G.

P. Scholarship

A grant of up to $1,500 awarded to a judge or court manager to cover the cost of tuition, transportation, and reasonable lodging to attend an out-of-State educational program within the United States or to participate in an online course. See section VI.E. for a complete description of scholarship application requirements.

Q. Special Condition

A requirement attached to a grant award that is unique to a particular project.

R. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

S. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

T. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court or court association to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. See section VI.C. for a complete description of Technical Assistance Grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)–(D)).* 1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

In FY 2006, the Institute will support the following types of grants:

1. Project Grants

See sections II.A., III.N., VI.A., VII.B. and C., and VIII.A. Project Grants will be limited to only the Special Interest categories listed in section II.A. Should an insufficient number of qualifying applications be received, the Board reserves the right to solicit applications for projects spanning topics beyond those listed in section II.A.

2. Continuation Grants

See sections II.B., III.D. and VI.B.

3. Technical Assistance Grants

See sections II.C., III.T., and VI.C. In FY 2006, the Institute is reserving up to $300,000 for these grants.

4. Judicial Branch Education Technical Assistance Grants

See sections II.D., III.K., and VI.D. In FY 2006, the Institute is reserving up to $100,000 for Judicial Branch Education Technical Assistance Grants.

5. Scholarships

{See sections II.E., III.P., and VI.E.—check this} In FY 2006, the Institute is reserving up to $200,000 for scholarships for judges and court managers.

C. Maximum Size of Awards

1. Applicants for Project Grants may request funding for amounts up to $300,000.

2. Applicants for Continuation Grants may request funding for amounts up to $150,000.

3. Applicants for Technical Assistance Grants may request funding for amounts up to $30,000.

4. Applicants for Judicial Branch Education Technical Assistance Grants may request funding for amounts up to $20,000.

5. Applicants for scholarships may request funding for amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for Project Grants ordinarily may not exceed 36 months. Absent extraordinary circumstances, no grant will continue for more than five years.

2. Grant periods for Continuation Grants ordinarily may not exceed 15 months.

3. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

VI. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix D for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approved funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VI.A.4. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section VIII.A.7.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas to Be Covered

The applicant should note the Special Interest category or categories that are addressed by the proposed project see section II.A.

c. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluations

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) For technical assistance projects, the applicant should explain the types of assistance that would be provided; the particular issues and problems for

which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) *Research.* An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training.* The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration.* The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.*, how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.*, was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.*, what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance.* For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.*, no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. Products

The program narrative in the application should contain a description of the products to be developed (*e.g.*, training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (See Appendix A), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.*, whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VIII.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix A.) Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product (*i.e.*, a written report with a reference to the Web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html or .pdf format.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include

an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (See section VIII.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. (See section VIII.A.11.e.)

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VIII.A.11.a.2. of the Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts. See Appendix D.

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by February 17, 2006.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the

grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). See sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement must be attached to the application.

l. Match

Applicants for Project Grants must provide a cash match equaling at least 50% of the total cost of the project, 60% in the second year, 65% in the third year, 70% in the fourth year, and 75% in the fifth year.

For example, if the Institute awards an applicant $100,000 for the first year of a grant, the applicant, possibly in combination with a third party, would be required to provide $100,000 in cash match. If the second-year grant is also $100,000, the applicant and/or third party would be required to provide $120,000 in cash match (**Note**: a federal third party may contribute no more than 49% of the total cost of a project).

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the cash match requirements only in the most extraordinary circumstances. See section VIII.A.8.b.

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications must be sent by first class or overnight mail or by courier no later than February 13, 2006. A postmark or courier receipt will constitute evidence of the submission date. Please mark PROJECT APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by

reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Continuation Grants

1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities performed under a previous grant. They are intended to maintain or enhance the specific program or service produced or established during the prior grant period.

2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant will continue for more than five years.

3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. See Appendix D for the application forms. A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

For a summary of the application process, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Continuation Grant.

The program narrative should conform to the length and format requirements set forth in section VI.A.3. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

5. Budget and Budget Narrative

a. Institute Funds

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in section VI.A.4. above. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

b. Matching Contribution

i. Applicants for Continuation Grants must provide a cash match that, depending upon the duration of the original project grant, is appropriate for the continuation grant award period (see section VI.A.4.l for the year by year cash match requirements).

For example, if the Institute awards an applicant a one-year continuation of a grant of one year's duration, then, if the applicant was seeking $100,000 from SJI, it would be required to provide $120,000 in cash match.

ii. The Institute may waive the cash match requirements in extraordinary circumstances. See section VIII.A.8.c.

6. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

7. Submission Requirements

The submission requirements set forth in section VI.A.5., other than the mailing deadline, apply to continuation applications.

C. Technical Assistance Grants

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts and court associations to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures.

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*http://www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator. Letters from court associations must be signed by the president of the association.

3. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits a request for technical assistance, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, *Line-Item Budget Form* (see Appendix E), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

A match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in extraordinary circumstances. See section VIII.A.8.b.

Recipients of Technical Assistance Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VIII.A.3.).

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 6, 2006 will be notified of the Institute's decision by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified by December 1, 2006.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Grant Committee, letters sent under separate cover must be received by the same date as the technical assistance request being supported.

D. Judicial Branch Education Technical Assistance Grants

1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts and court associations to support: (1) The provision of expert strategic assistance designed to enable them to present judicial branch education programs; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a specific curriculum once (i.e., with one grant) in a given State.

JBE TA Grants may support consultant assistance in maintaining or developing systematic or innovative judicial branch educational programming. The assistance might include expert consultation in developing strategic plans to ensure the continued provision of judicial branch

education programming despite fiscal constraints; development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State or in a region.

2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. For On-Site Consultant Assistance

(1) *Need for Funding.* What is the critical judicial branch educational need facing the court or association? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff or association members undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or affiliated with the association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court or association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the applicant, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits an application, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For Adaptation of a Curriculum

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.*, from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (Applicants may demonstrate this by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Appendix D, FORM B.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix E) and a budget narrative (see A.4.d. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested. Recipients of JBE TA grants are not required to provide a cash match. The Institute may waive the match requirements in extraordinary circumstances. See section VIII.A.8.b.

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 6, 2006 will be notified of the Institute's decision by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters

between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified by December 1, 2006.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2006 should submit its application no later than January 6, 2006, in time for the Board's Spring meeting.

E. Scholarships

1. Purpose and Scope

The purposes of the Institute's scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; allow State court judges and court managers to enroll and participate in online courses; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purposes of attending an educational program in another State or enrolling in an online educational program. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed $150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.485/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of $1,500 and other costs of attending the program—such as meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the scholarship award process, visit the Institute's Web site at *http://www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works or online. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

c. *Limitation.* Applicants may not receive more than one scholarship in a three-year period unless the course specifically assumes multi-year participation.

3. Forms

a. Scholarship Application—FORM S1 (Appendix F)

The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted. The Institute anticipates switching to an electronic scholarship application process sometime during fiscal year 2006.

b. Scholarship Application Concurrence—FORM S2 (Appendix F)

Judges and court managers applying for scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix F). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 2 and February 27, 2006, for programs beginning between April 1 and June 30, 2006;

March 30 and May 26, 2006, for programs beginning between July 1 and September 30, 2006;

July 3 and August 25, 2006 for programs beginning between October 1 and December 31, 2006; and

October 2 and December 1, 2006 for programs beginning between January 1 and March 31, 2007.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

VII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Project and Continuation Grant Applications

a. Project and Continuation Grant applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

(11) The proposed project's relationship to one of the Special Interest categories set forth in section II.A.

b. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section IV.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For On-Site Consultant Assistance

(1) Whether the assistance would address a critical need of the court or association;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The commitment of the court or association to act on the consultant's recommendations; and

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds or scholarship funds from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project and Continuation Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch

Education Technical Assistance Grants to the committee established for each program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman will serve as the tie-breaker.

The Chairman of the Board will sign approved awards on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project and Continuation Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project and continuation grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval. Failure to comply with these requirements could result in the termination of a grantee's award.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and

Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients are required to provide a match. See section III.L. for the definition of match. The amount and nature of required match depends on the type grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsection a. below.

a. Project and Continuation Grants

All grantees are required to assume a greater share of project support over time.

All grantees are required to provide a cash match equaling at least 50% of the total project cost in the first year of the project, 60% in the second year, 65% in the third year, 70% in the fourth year, and 75% in the fifth year. For example, if SJI awards a grantee $100,000 for the first year of a grant, the grantee would be required to provide $100,000 in cash match. If the second-year grant is also $100,000, regardless of whether it is the second year of a project grant or the first year of a continuation grant, the grantee is required to provide $120,000 in cash match. A court that wishes to limit its second-year contribution to $50,000 may ask the Institute for a reduced amount, *i.e.*, $33,333, in order to meet the 60% requirement.

b. Waiver

(1) The match requirement may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State or the highest ranking official in the requesting organization and approval by the Board of Directors. 42 U.S.C. 10705(d).

(2) The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. See section VII.B.1.b.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI–[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

b. Charges for Grant-Related Products/ Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape, or software), the product should be distributed to the field without charge.

When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and

IX.G. for requirements regarding project-related income realized during the project period.

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute's Web site, *www.statejustice.org.*) Where possible and cost-effective, hard copies of products sent to SJI depository libraries should be bound rather than put in a ring binder. Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape, DVD or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination and approval in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (e.g., by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers must be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

IX. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb.*

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

3. *Office of Management and Budget (OMB) Circular A–88,* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

4. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

5. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

6. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

7. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

8. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council (see section III.F.).

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VIII.A.3.).

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a total project cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section IX.C.2. above.)

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and

maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute (see section IX.H.2. below.). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a ''check-issued'' basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Grants.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (i.e., on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, etc.

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. A Financial Status Report is required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in

accordance with the principles set forth in *OMB Circulars A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval. See section X.A.1.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). See sections III.L. and VI.A.4.d.(11).

a. *Approved Plan Available.* (1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.*, accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/ subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project or Continuation Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128,* or *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: Follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project will continue under a Continuation Grant.

2. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For Continuation Grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (see section IX.I.2.b.).

14. Consultant rates (see section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section IX.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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Kevin Linskey, Executive Director (ex officio)

Kevin Linskey,
Executive Director.

Appendix A—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis
State Law Librarian
Alabama Supreme Court
Judicial Building 300 Dexter Avenue
Montgomery, AL 36104
(334) 242–4347
director@alalinc.net

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows
State Law Librarian
Alaska State Court Law Library
303 K Street
Anchorage, AK 99501
(907) 264–0583
cfellows@courts.state.ak.us

Arizona

Supreme Court Library

Ms. Lani Orosco
Staff Assistant
Arizona Supreme Court
Staff Attorney's Office
Library
1501 W. Washington, Suite 445
Phoenix, AZ 85007
(602) 542–5028
lorosco@supreme.sp.state.az.us

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich
Director
Administrative Office of the Courts
Supreme Court of Arkansas
Justice Building
625 Marshall Street
Little Rock, AR 72201
(501) 682–9400
jd.gingerich@mail.state.ar.us

California

Administrative Office of the Courts

Mr. William C. Vickrey
Administrative Director of the Courts
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
(415) 865–4235
william.vickrey@jud.ca.gov

Colorado

Supreme Court Library

Ms. Linda Gruenthal
Deputy Supreme Court Law Librarian
2 East 14th Avenue
Denver, CO 80203
(303) 837–3720
cscltech@state.co.us

Connecticut

State Library

Ms. Denise D. Jernigan
Law Librarian
Connecticut State Library
231 Capitol Avenue
Hartford, CT 06106
(860) 757–6598
djernigan@cslib.org

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin
Deputy Director
Administrative Office of the Courts
Carvel State Office Building
820 North French Street
11th Floor
P.O. Box 8911
Wilmington, DE 19801
(302) 577–8481
michael.mclaughlin@state.de.us

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks
Executive Officer
District of Columbia Courts
500 Indiana Avenue, NW., Suite 1500
Washington, D.C. 20001
(202) 879–1700
Wicksab@dcsc.gov

Florida

Administrative Office of the Courts

Ms. Elisabeth H. Goodner
State Courts Administrator
Office of the State Courts Administrator
Florida Supreme Court
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399
(850) 922–5081
goodnerl@flcourts.org

Georgia

Administrative Office of the Courts

Mr. David Ratley
Director
Administrative Office of the Courts
244 Washington Street, SW., Suite 300
Atlanta, GA 30334
(404) 656–5171
ratleydl@gaaoc.us

Hawaii

Supreme Court Library

Ms. Ann Koto
State Law Librarian
The Supreme Court Law Library
417 South King St., Room 119
Honolulu, HI 96813
(808) 539–4964
Ann.S.Koto@courts.state.hi.us

Idaho

AOC Judicial Education Library/State Law Library

Mr. Richard Visser
State Law Librarian
Idaho State Law Library
Supreme Court Building
451 West State St.
Boise, ID 83720
(208) 334–3316
lawlibrary@isc.state.id.us

Illinois

Supreme Court Library

Ms. Brenda Larison
Supreme Court of Illinois Library
200 East Capitol Avenue
Springfield, IL 62701–1791
(217) 782–2425
blarison@court.state.il.us

Indiana

Supreme Court Library

Ms. Terri L. Ross
Supreme Court Librarian
Supreme Court Library
State House, Room 316
Indianapolis, IN 46204
(317) 232–2557
tross@courts.state.in.us

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty
Director of Judicial Branch Education
Iowa Judicial Branch
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319
(515) 242–0190
jerry.beatty@jb.state.ia.us

Kansas

Supreme Court Library

Mr. Fred Knecht
Law Librarian
Kansas Supreme Court Library
Kansas Judicial Center
301 S.W. 10th Avenue
Topeka, KS 66612
(785) 296–3257
knechtf@kscourts.org

Kentucky

State Law Library

Ms. Vida Vitagliano
Cataloging and Research Librarian
Kentucky Supreme Court Library
700 Capitol Avenue, Suite 200
Frankfort, KY 40601
(502) 564–4185
vidavitagliano@mail.aoc.state.ky.us

Louisiana

State Law Library

Ms. Carol Billings
Director
Louisiana Law Library
Louisiana Supreme Court Building
400 Royal Street
New Orleans, LA 70130
(504) 310–2401
cbillings@lasc.org

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall
State Law Librarian
43 State House Station
Augusta, ME 04333
(207) 287–1600
lynn.randall@legislature.maine.gov

Maryland

State Law Library

Mr. Steve Anderson
Director
Maryland State Law Library
Court of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401
(410) 260–1430
steve.anderson@courts.state.md.us

Massachusetts

Middlesex Law Library

Ms. Linda Hom
Librarian
Middlesex Law Library
Superior Court House
40 Thorndike Street
Cambridge, MA 02141
(617) 494–4148
midlawlib@yahoo.com

Michigan

Michigan Judicial Institute

Dawn F. McCarty
Director
Michigan Judicial Institute
P.O. Box 30205
Lansing, MI 48909
(517) 373–7509
mccartyd@courts.mi.gov

Minnesota

State Law Library (Minnesota Judicial Center)

Ms. Barbara L. Golden
State Law Librarian
G25 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, MN 55155
(612) 297–2089
barb.golden@courts.state.mn.us

Mississippi

Mississippi Judicial College

Hon. Leslie G. Johnson
Executive Director
Mississippi Judicial College
P.O. Box 8850
University, MS 38677
(662) 915–5955
lwleslie@olemiss.edu

Montana

State Law Library

Ms. Judith Meadows
State Law Librarian
State Law Library of Montana
P.O. Box 203004
Helena, MT 59620
(406) 444–3660
jmeadows@state.mt.us

Nebraska

Administrative Office of the Courts

Mr. Philip D. Gould, Director
Judicial Branch Education
Administrative Office of the Courts/Probation
521 South 14th St., Suite 200
Lincoln, NE 68508–2707
(402) 471–3072 (office)/(402)471–3071 (fax)
pgould@nsc.state.ne.us

Nevada

National Judicial College

Mr. Randall Snyder
Law Librarian
National Judicial College
Judicial College Building, MS 358
Reno, NV 89557
(775) 327–8278
snyder@judges.org

New Hampshire

New Hampshire Law Library

Ms. Mary Searles
Technical Services Law Librarian
New Hampshire Law Library
Supreme Court Building
One Noble Drive
Concord, NH 03301–6160
(603) 271–3777
msearles@courts.state.nh.us

New Jersey

New Jersey State Library Mr. Thomas O'Malley

Supervising Law Librarian
New Jersey State Law Library
185 West State Street
P.O. Box 520
Trenton, NJ 08625–0250
(609) 292–6230
tomalley@njstatelib.org

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar
Librarian
Supreme Court Library
Post Office Drawer L
Santa Fe, NM 87504
(505) 827–4850

New York

Supreme Court Library

Ms. Barbara Briggs
Law Librarian
Syracuse Supreme Court Law Library
401 Montgomery Street
Syracuse, NY 13202
(315) 671–1150
bbriggs@courts.state.ny.us

North Carolina

Supreme Court Library

Mr. Thomas P. Davis
Librarian
North Carolina Supreme Court Library
500 Justice Building
2 East Morgan Street
Raleigh, NC 27601
(919) 733–3425
tpd@sc.state.nc.us

North Dakota

Supreme Court Library

Ms. Marcella Kramer
Assistant Law Librarian
Supreme Court Law Library
600 East Boulevard Avenue, Dept. 182
2nd Floor, Judicial Wing
Bismarck, ND 58505–0540
(701) 328–2229
mkramer@ndcourts.com

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Ms. Margarita M. Palacios
Director of Courts
Supreme Court of the Commonwealth of the Northern Mariana Islands
P.O. Box 502165
Saipan, MP 96950
(670) 235–9700
supremecourt@saipan.com

Ohio

Supreme Court Library

Mr. Ken Kozlowski
Director
Law Library
Supreme Court of Ohio
65 South Front Street, 11th Floor
Columbus, OH 43215–3431
(614) 387–9666
kozlowsk@sconet.state.oh.us

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers
State Court Administrator
Administrative Office of the Courts
1915 North Stiles Avenue, Suite 305
Oklahoma City, OK 73105
(405) 521–2450
conyersh@oscn.net

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click
State Court Administrator
Oregon Judicial Department
Supreme Court Building
1163 State Street
Salem, OR 97301
(503) 986–5500
kingsley.w.click@ojd.state.or.us

Pennsylvania

State Library of Pennsylvania

Ms. Barbara Miller
Collection Management Librarian
State Library of Pennsylvania
Bureau of State Library
333 Market Street
Harrisburg, PA 17126–1745
(717) 787–5718
barbmiller@state.pa.us

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq.
Director, Area of Planning and Management
Office of Court Administration
P.O. Box 917
Hato Rey, PR 00919

Rhode Island

Roger Williams University

Ms. Gail Winson
Director of Law Library/Associate Professor of Law
Roger Williams University
School of Law Library
10 Metacom Avenue
Bristol, RI 02809
401/254–4531
gwinson@law.rwu.edu

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley
Director
Coleman Karesh Law Library
University of South Carolina
Main and Green Streets
Columbia, SC 29208
(803) 777–5944
hinckley@law.sc.edu

South Dakota

State Law Library

Librarian
South Dakota State Law Library
500 East Capitol
Pierre, South Dakota 57501
(605) 773–4898
donnis.deyo@ujs.state.sd.ud

Tennessee

Tennessee State Law Library

Hon. Cornelia A. Clark
Executive Director
Administrative Office of the Courts
511 Union Street, Suite 600
Nashville, TN 37219
(615) 741–2687
cclark@tscmail.state.tn.us

Texas

State Law Library

Mr. Marcelino A. Estrada
Director, State Law Library
P.O. Box 12367
Austin, TX 78711
(512) 463–1722
tony.estrada@sll.state.tx.us

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian
The Library
Territorial Court of the Virgin Islands
Post Office Box 70
Charlotte Amalie, St. Thomas
Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Jessica Van Buren
Utah State Library
450 South State Street
P.O. Box 140220
Salt Lake City, UT 84114–0220
(801) 238–7991
jessicavb@email.utcourts.gov

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan
Law Librarian
Vermont Department of Libraries
109 State Street
Pavilion Office Building
Montpelier, VT 05609
(802) 828–3268
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Virginia

Administrative Office of the Courts

Ms. Gail Warren
State Law Librarian
Virginia State Law Library
Supreme Court of Virginia
100 North Ninth Street, 2nd Floor
Richmond, VA 23219–2335
(804) 786–2075
gwarren@courts.state.va.us

Washington

Washington State Law Library

Ms. Kay Newman
State Law Librarian
Washington State Law Library
Temple of Justice
P.O. Box 40751
Olympia, WA 98504–0751
(360) 357–2136
kay.newman@courts.wa.gov

West Virginia

Supreme Court of Appeals Library

Ms. Kaye Maerz
State Law Librarian
West Virginia Supreme Court of Appeals Library
1900 Kanawha Boulevard East
Building 1, Room E–404
Charleston, WV 25305
(304) 558–2607
klm@courts.state.wv.us

Wisconsin

State Law Library

Ms. Jane Colwin
State Law Librarian
State Law Library
120 M.L.K. Jr. Boulevard
Madison, WI 53703
(608) 261–2340
jane.colwin@wicourts.gov

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson
Law Librarian
Wyoming State Law Library
Supreme Court Building
2301 Capitol Avenue
Cheyenne, WY 82002
(307) 777–7509
kcarls@state.wy.us

National

American Judicature Society

Ms. Deborah Sulzbach
Acquisitions Librarian
Drake University
Law Library, Opperman Hall
2507 University Avenue

Des Moines, IA 50311–4505
(515) 271–3784
e-mail: *deborah.sulzbach@drake.edu*

National Center for State Courts

Ms. Joan Cochet
Library Specialist
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185–4147
(757) 259–1826
library@ncsc.dni.us

JERITT

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(517) 353–8603
(517) 432–3965 (fax)
connerm@msu.edu
Web site: *http://jeritt.msu.edu*

Appendix B—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (*http://jeritt.msu.org* or 517/353–8603) for more information about these and other SJI-supported technical assistance projects.

Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066)

Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122)
Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205)

Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011)
A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266)
Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221)
Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222)

Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122)

Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108)
Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049)

Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142)

Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200)

Appendix C—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. *Please refer to section VI.C. for information on submitting a letter application for a Judicial Branch Education Technical Assistance Grant.* A list of all SJI-supported education projects is available on the SJI Web site (*http://www.statejustice.org*). Please also check with the JERITT project (*http://jeritt.msu.edu* or 517/353–8603) and your State SJI-designated library (see Appendix A) for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089)
Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277)
Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002)
Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038)

Court Coordination

Collaboration: A Training Curriculum to Enhance the Effectiveness of Criminal Justice Teams (Center for Effective Public Policy: SJI–99–039)
Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027)
Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88-NIC–001)
Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087)
Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175)

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026)
Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056)
A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052)
Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043)
Strengthening Rural Courts of Limited Jurisdiction and Team Training for Judges and Clerks (Rural Justice Center: SJI–90–014, SJI–91–082)
Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214)
Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068)
Managing Mass Tort Cases (National Judicial College: SJI–94–141)
Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025)
Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148)
Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/National Center for State Courts: SJI–96–159)
Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041)

Courts and Communities

Reporting on the Courts and the Law (American Judicature Society: SJI–88–014)
Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083)
National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013)
Access to Justice: The Impartial Jury and the Justice System and When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide (National Judicial College: SJI–91–054)
You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048)
Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040)
Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008)

Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic Association for Court Management: SJI–98–208)
Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268)
Public Trust and Confidence (Arizona Courts Association: SJI–99–063)

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071)
The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058)
Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043)
Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028)
Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063)
A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers (American Judicature Society: SJI–93–068)
Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075)
Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019)
Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006)
Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082)
Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245)
Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089)
Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150)
When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161)
When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI–96–152)

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).
Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081)
Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062)
Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum])
Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255)
Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019)
Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274)

Health and Science

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030)

Judicial Education for Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086)
Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI–94–002)

Judicial Branch Education: Faculty and Program Development

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI–91–021)
Faculty Development Instructional Program'' from Curriculum Review (National Judicial College: SJI–91–039)
Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233)
Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202)

Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040)
Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028)
A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078)
Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043)
New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155)
Magistrates Correspondence Course (Alaska Court System: SJI–92–156)
Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058)
Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142)
Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148)
Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001)
Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017)
Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94–321)
Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI–99–150)

Strategic and Futures Planning

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029)
An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045)

Substance Abuse

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095)
Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291)
Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030)
Judicial Education on Substance Abuse (American Judges Association and National Center for State Courts: SJI–01–210)

BILLING CODE 6820–SC–P

Attachment D

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
_____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person
_____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
☐ State court
☐ National organization operating in conjunction with State court
☐ National State court support organization
☐ College or university
☐ Other non-profit organization or agency
☐ Individual
☐ Corporation or partnership
☐ Other unit of government
☐ Other _____ *(specify)*
_____

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. EMPLOYER IDENTIFICATION # _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____
_____

7. ENTITY TO RECEIVE FUNDS *(if different from above)*
a. Organizational Name _____
_____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person
_____
k. Title _____
l. E-Mail Address _____

8. a. AMOUNT REQUESTED FROM SJI $_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $ 0
d. TOTAL PROJECT COST $ 0

9. TITLE OF PROPOSED PROJECT

10. CONGRESSIONAL DISTRICT OF: _____ (Name of Representative; District Number) _____ (Project (if different than applicant): Name of Representative; District Number)

11. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.

_____ _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT TITLE DATE
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

FOR INSTITUTE USE ONLY

12. a. APPLICATION NUMBER _____ b. CONCEPT PAPER NUMBER _____ c. GRANT NUMBER _____	13. DATE RECEIVED	14. DATE OF ACTION

Form A 09/00

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-l Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award. (example: 06/01/2004).

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district,** along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____,
Name of Applicant

approves its submission to the State Justice Institute, and

☐ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

☐ designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							0
Fringe Benefits							0
Consultant / Contractual							0
Travel							0
Equipment							0
Supplies							0
Telephone							0
Postage							0
Printing / Photocopying							0
Audit							0
Other (specify)							0
Direct Costs	0	0	0	0	0	0	0
Indirect Costs							0
Total	0	0	0	0	0	0	0

Remarks:

Form C 5/95 *(Instructions on reverse side)*

91853

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE

PAGE _____ OF _____

PROJECT BUDGET

(SPEADSHEET FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs	0	0	0	0	0	0	0
Indirect Costs (%)							
SJI Total	0	0	0	0	0	0	0
STATE FUNDS							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total	0	0	0	0	0	0	0

Form C1 5/95 *(Instructions on reverse side)*

91854

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE

ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

Form D 5/95 *(over)*

91855

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:
    This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	**Year**
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

Attachment E

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$ 0	$ 0	$ 0

PROJECT TOTAL $ 0

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Attachment F

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Email Address: _____

7. Congressional District: _____

PROGRAM INFORMATION:

☐ On-site ☐ Online

8. Course Name: _____

9. Course Dates: _____

10. Course Provider: _____

11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to $150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of $1,500.

Tuition: $ _____ Transportation: $ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: $ _____ Total Amount Requested: $ _____

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No If so, please specify the source(s) and amount(s) _____

_____

Form S1 (9/05)

SJI SCHOLARSHIP APPLICATION PAGE 2

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and provide the information requested below.
(You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

☐ 0–1 year ☐ 2–4 years ☐ 5–7 years ☐ 8–10 years ☐ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ _____
Signature Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

[FR Doc. 05–19439 Filed 9–29–05; 8:45 am]
BILLING CODE 6820–SC–C

Federal Register

Friday,

September 30, 2005

Part IV

Department of the Treasury

Fiscal Service

31 CFR Parts 306, 315, 353, et al.

General Regulations Governing U.S. Securities; Sale and Issuance of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Final Rules

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 306, 315, 353, 357, 360, and 363

[Docket No. BPD–33–05–01]

General Regulations Governing U.S. Securities; Regulations Governing U.S. Savings Bonds, Series A, B, C, D, E, F, G, H, J, and K, and U.S. Savings Notes; Regulations Governing United States Savings Bonds, Series EE and HH; Regulations Governing Book-Entry Treasury Bonds, Notes and Bills (Department of the Treasury Circular, Public Debt Series No. 2–86); Regulations Governing Definitive United States Savings Bonds, Series I; Regulations Governing Securities Held in the New Treasury Direct System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: New Treasury Direct is an account-based, book-entry, online system for purchasing, holding, and conducting transactions in Treasury securities. The system has been referred to as New Treasury Direct because there is an older system concurrently operating that is also named Treasury Direct, for marketable securities only, with different governing regulations. This rule renames the older version of Treasury Direct as Legacy Treasury Direct, and renames New Treasury Direct as, simply, TreasuryDirect (one word).

In addition, this rule simplifies the regulatory structure for TreasuryDirect. Initially, we began the system with only one security. Since that time, we have added several securities to the system, each with its own governing subpart. Many of the rules in the subparts governing individual securities are repetitive. For instance, the provisions for decedents' estates differ only slightly in subpart C (savings bonds) from provisions in subpart D (certificates of indebtedness), and subpart E (converted savings bonds). Rather than repeat similar provisions for each security, this rule will integrate the similar provisions into one provision that will apply to all securities in the system. The integrated provisions will be contained in subpart B, which applies to all securities held within the system. Provisions that affect only one security will be contained within the subpart governing that security. In condensing and moving provisions, we are not making substantive changes.

We are also amending provisions relating to Internal Revenue Service levies to provide that we will honor levies against the secondary owner of securities owned in the primary/secondary form of ownership if the levy is received at a date when the secondary owner has a right to redeem the security.

DATES: Effective: September 30, 2005.

ADDRESSES: You can download this final rule at the following Internet addresses: *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr.*

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Klimas, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION:

TreasuryDirect is an account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities via the Internet. Currently, book-entry Series EE and Series I savings bonds and certificates of indebtedness are offered for purchase, and definitive savings bonds may be converted to book-entry savings bonds through TreasuryDirect.

The TreasuryDirect regulations have been written in a modular manner. We have added subparts as we have added securities to the system. Each subpart has its own provisions as to judicial matters, forms of registration, decedents' estates, evidentiary requirements, and forfeiture procedures. This is because it was unclear when we began the system with savings bonds what securities would later be added, and whether these securities would have the same terms and conditions as the savings bonds already in the system. Now, it is clear that many of the administrative provisions for all securities will be similar. Therefore, we have removed some provisions from the subparts specific to the securities, and added consolidated provisions to the subpart that is common to all securities held in TreasuryDirect. This will better clarify the terms and conditions for forms of registration, decedents' estates, judicial proceedings, evidentiary requirements, and forfeiture procedures, and will tailor these provisions to the system's current and planned configuration. We originally placed these provisions, and others, into subpart C, which deals specifically with book-entry savings bonds, subpart D, which deals specifically with certificates of indebtedness, and subpart E, which deals with converted savings bonds. We are moving these provisions to subpart B, which is a subpart that is common to all securities held within the TreasuryDirect system. Generally, the substance of the moved provisions has not been changed, other than to make references to securities in general rather than to a specific security.

We are amending the provisions regarding Internal Revenue Service levies to provide that we will honor levies against the secondary owner of securities owned in the primary/secondary form of ownership if the levy is received at a time when the secondary owner has a right to redeem the security. Previously, levies were honored only against ''owners'' as defined in the TreasuryDirect governing regulations. Owners were defined as ''either a single owner, the first person named in the registration of a security held in the owner with beneficiary form of registration, the primary owner of a security held in the primary owner with secondary owner form of registration, or either coowner of a converted savings bond.'' IRS levies were not permitted against secondary owners because of the nature of the ownership interest. However, during periods when a secondary owner has been given the right to redeem, he or she has an interest sufficient for an IRS levy to attach.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Because this final rule relates to matters of public contract and procedures for United States securities, notice and public procedure and delayed effective date requirements are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 306

Government securities.

31 CFR Part 315

Bonds.

31 CFR Part 353

Bonds.

31 CFR Part 357

Banks, Banking, Bonds, Electronic funds transfers, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 360

Bonds.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR chapter II, subchapter B, is amended as follows:

PART 306—GENERAL REGULATIONS GOVERNING U.S. SECURITIES

■ 1. The authority citation of part 306 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

■ 2. Amend § 306.2 by adding paragraph (u) to read as follows:

§ 306.2 Definitions of words and terms as used in these regulations.

* * * * *

(u) *Voluntary representative* means the person qualified by the Department of the Treasury to request payment or make an assignment of a decedent's securities pursuant to § 306.65.

■ 3. Revise § 306.65 to read as follows:

§ 306.65 Decedent's estate.

(a) *Estate is being administered.* (1) A legal representative of a deceased owner's estate may request payment of matured securities to the estate, or may assign securities to or for the benefit of the persons entitled.

(2) Appropriate proof of appointment for the legal representative of the estate is required. Letters of appointment must be dated not more than one year prior to the date of submission of the letters of appointment.

(b) *Estate has been settled previously.* If the estate has been settled previously through judicial proceedings, the persons entitled may request payment of matured securities, or may request assignment of unmatured securities. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence is required.

(c) *Special provisions under the law of the jurisdiction of the decedent's domicile.* If there is no formal or regular administration and no representative of the estate is to be appointed, the person appointed to receive or distribute the assets of a decedent's estate without regular administration under summary or small estates procedures under applicable local law may request payment of matured securities, or may request assignment of the securities. Appropriate evidence is required.

(d) *When administration is required.* If the total redemption value of the Treasury securities and undelivered payments, if any, held directly on our records that are the property of the decedent's estate is greater than $100,000, administration of the decedent's estate will be required. The redemption value of savings bonds and the principal amount of marketable securities will be used to determine the value of securities, and will be determined as of the date of death. Administration may also be required at the discretion of the Department for any case.

(e) *Voluntary representative for small estates that are not being otherwise administered.* (1) *General.* A voluntary representative is a person qualified according to paragraph (e)(3) of this section, to request payment of a decedent's matured securities or to make an assignment of a decedent's unmatured securities. The voluntary representative procedures are for the convenience of the Department; entitlement to the decedent's securities and held payments, if any, is determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. Voluntary representative procedures may be used only if:

(i) There has been no administration, no administration is contemplated, and no summary or small estate procedures under applicable local law have been used;

(ii) The total redemption value of the Treasury securities and held payments, if any, held directly on our records that are the property of the decedent's estate is $100,000 or less as of the date of death; and

(iii) There is a person eligible to serve as the voluntary representative according to paragraph (e)(3) of this section.

(2) *Authority of voluntary representative.* A voluntary representative may:

(i) Request payment of the decedent's matured securities on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death;

(ii) Assign the decedent's securities to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death.

(3) *Order of precedence for voluntary representative.* An individual eighteen years of age or older may act as a voluntary representative according to the following order of precedence: a surviving spouse; if there is no surviving spouse, then a child of the decedent; if there are none of the above, then a descendant of a deceased child of the decedent; if there are none of the above, then a parent of the decedent; if there are none of the above, then a brother or sister of the decedent; if there are none of the above, then a descendant of a deceased brother or sister of the decedent; if there are none of the above, then a next of kin of the decedent, as determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. As used in this order of precedence, child means a natural or adopted child of the decedent.

(4) *Liability.* By serving, the voluntary representative warrants that the distribution of payments or securities is to or on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death. The United States is not liable to any person for the improper distribution of payments or securities. Upon payment or assignment of the securities at the request of the voluntary representative, the United States is released to the same extent as if it had paid or delivered to a representative of the estate appointed pursuant to the law of the jurisdiction in which the decedent was domiciled at the date of death. The voluntary representative shall indemnify and hold harmless the United States and all creditors and persons entitled to the estate of the decedent. The amount of the indemnification is limited to an amount no greater than the value received by the voluntary representative.

(f) *Creditor.* If there has been no administration, no administration is contemplated, no summary or small estate procedures under applicable local law have been used, and there is no person eligible to serve as a voluntary representative pursuant to paragraph (e) of this section, then a creditor may make a claim for the amount of the debt, providing the debt has not been barred by applicable local law. The claim may only be satisfied by the proceeds of matured securities.

§§ 306.66 and 306.67 [Removed and Reserved]

■ 4. Remove and reserve §§ 306.66 and 306.67.

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

■ 5. The authority citation of part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

■ 6. Amend § 315.2 by adding paragraph (r) to read as follows:

§ 315.2 Definitions.

* * * * *

(r) *Voluntary representative* means the person qualified by the Department of the Treasury to request payment or distribution of a decedent's savings bonds pursuant to § 315.71.

■ 7. Revise § 315.71 to read as follows:

§ 315.71 Decedent's estate.

(a) *Estate is being administered.* (1) A legal representative of a deceased owner's estate may request payment of savings bonds to the estate, or may distribute the savings bonds to the persons entitled.

(2) Appropriate proof of appointment for the legal representative of the estate is required. Letters of appointment must be dated not more than one year prior to the date of submission of the letters of appointment.

(b) *Estate has been settled previously.* If the estate has been settled previously through judicial proceedings, the persons entitled may request payment or reissue of the savings bonds. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence is required.

(c) *Special provisions under the law of the jurisdiction of the decedent's domicile.* If there is no formal or regular administration and no representative of the estate is to be appointed, the person appointed to receive or distribute the assets of a decedent's estate without regular administration under summary or small estates procedures under applicable local law may request payment or reissue of savings bonds. Appropriate evidence is required.

(d) *When administration is required.* If the total redemption value of the Treasury securities and undelivered payments, if any, held directly on our records that are the property of the decedent's estate is greater than $100,000, administration of the decedent's estate will be required. The redemption value of savings bonds and the principal amount of marketable securities will be used to determine the value of securities, and will be determined as of the date of death. Administration may also be required at the discretion of the Department for any case.

(e) *Voluntary representative for small estates that are not being otherwise administered.* (1) *General.* A voluntary representative is a person qualified according to paragraph (e)(3) of this section, to redeem or to distribute a decedent's savings bonds. The voluntary representative procedures are for the convenience of the Department; entitlement to the decedent's savings bonds and held payments, if any, is determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. Voluntary representative procedures may be used only if:

(i) There has been no administration, no administration is contemplated, and no summary or small estate procedures under applicable local law have been used;

(ii) The total redemption value of the Treasury securities and held payments, if any, held directly on our records that are the property of the decedent's estate is $100,000 or less as of the date of death; and

(iii) There is a person eligible to serve as the voluntary representative according to paragraph (e)(3) of this section.

(2) *Authority of voluntary representative.* A voluntary representative may:

(i) Redeem the decedent's savings bonds on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death;

(ii) Distribute the decedent's savings bonds to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death.

(3) *Order of precedence for voluntary representative.* An individual eighteen years of age or older may act as a voluntary representative according to the following order of precedence: A surviving spouse; if there is no surviving spouse, then a child of the decedent; if there are none of the above, then a descendant of a deceased child of the decedent; if there are none of the above, then a parent of the decedent; if there are none of the above, then a brother or sister of the decedent; if there are none of the above, then a descendant of a deceased brother or sister of the decedent; if there are none of the above, then a next of kin of the decedent, as determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. As used in this order of precedence, child means a natural or adopted child of the decedent.

(4) *Liability.* By serving, the voluntary representative warrants that the distribution of payments or savings bonds is to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death. The United States is not liable to any person for the improper distribution of payments or savings bonds. Upon payment or distribution of the savings bonds at the request of the voluntary representative, the United States is released to the same extent as if it had paid or delivered to a representative of the estate appointed pursuant to the law of the jurisdiction in which the decedent was domiciled at the date of death. The voluntary representative shall indemnify and hold harmless the United States and all creditors and persons entitled to the estate of the decedent. The amount of the indemnification is limited to an amount no greater than the value received by the voluntary representative.

(f) *Creditor.* If there has been no administration, no administration is contemplated, no summary or small estate procedures under applicable local law have been used, and there is no person eligible to serve as a voluntary representative pursuant to paragraph (e) of this section, then a creditor may make a claim for payment for the amount of the debt, providing the debt has not been barred by applicable local law.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

■ 8. The authority citation of part 353 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

■ 9. Amend § 353.2 by adding paragraph (n) to read as follows:

§ 353.2 Definitions.

* * * * *

(n) *Voluntary representative* means the person qualified by the Department of the Treasury to request payment or distribution of a decedent's savings bonds pursuant to § 353.71.

■ 10. Revise § 353.71 to read as follows:

§ 353.71 Decedent's estate.

(a) *Estate is being administered.* (1) A legal representative of a deceased owner's estate may request payment of savings bonds to the estate, or may distribute the savings bonds to the persons entitled.

(2) Appropriate proof of appointment for the legal representative of the estate is required. Letters of appointment must be dated not more than one year prior

to the date of submission of the letters of appointment.

(b) *Estate has been settled previously.* If the estate has been settled previously through judicial proceedings, the persons entitled may request payment or reissue of savings bonds. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence is required.

(c) *Special provisions under the law of the jurisdiction of the decedent's domicile.* If there is no formal or regular administration and no representative of the estate is to be appointed, the person appointed to receive or distribute the assets of a decedent's estate without regular administration under applicable local law summary or small estates procedures may request payment or reissue of savings bonds. Appropriate evidence is required.

(d) *When administration is required.* If the total redemption value of the Treasury securities and undelivered payments, if any, held directly on our records that are the property of the decedent's estate is greater than $100,000, administration of the decedent's estate will be required. The redemption value of savings bonds and the principal amount of marketable securities will be used to determine the value of securities, and will be determined as of the date of death. Administration may also be required at the discretion of the Department for any case.

(e) *Voluntary representative for small estates that are not being otherwise administered.* (1) *General.* A voluntary representative is a person qualified according to paragraph (e)(3) of this section, to redeem or distribute a decedent's savings bonds. The voluntary representative procedures are for the convenience of the Department; entitlement to the decedent's savings bonds and held payments, if any, is determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. Voluntary representative procedures may be used only if:

(i) There has been no administration, no administration is contemplated, and no summary or small estate procedures under applicable local law have been used;

(ii) The total redemption value of the Treasury securities and held payments, if any, held directly on our records that are the property of the decedent's estate is $100,000 or less as of the date of death; and

(iii) There is a person eligible to serve as the voluntary representative according to paragraph (e)(3) of this section.

(2) *Authority of voluntary representative.* A voluntary representative may:

(i) Redeem the decedent's savings bonds that are eligible for redemption on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death;

(ii) Distribute the decedent's savings bonds to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death.

(3) *Order of precedence for voluntary representative.* An individual eighteen years of age or older may act as a voluntary representative according to the following order of precedence: A surviving spouse; if there is no surviving spouse, then a child of the decedent; if there are none of the above, then a descendant of a deceased child of the decedent; if there are none of the above, then a parent of the decedent; if there are none of the above, then a brother or sister of the decedent; if there are none of the above, then a descendant of a deceased brother or sister of the decedent; if there are none of the above, then a next of kin of the decedent, as determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. As used in this order of precedence, child means a natural or adopted child of the decedent.

(4) *Liability.* By serving, the voluntary representative warrants that the distribution of payments or savings bonds is to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death. The United States is not liable to any person for the improper distribution of payments or securities. Upon payment or transfer of the securities at the request of the voluntary representative, the United States is released to the same extent as if it had paid or delivered to a representative of the estate appointed pursuant to the law of the jurisdiction in which the decedent was domiciled at the date of death. The voluntary representative shall indemnify and hold harmless the United States and all creditors and persons entitled to the estate of the decedent. The amount of the indemnification is limited to an amount no greater than the value received by the voluntary representative.

(f) *Creditor.* If there has been no administration, no administration is contemplated, no summary or small estate procedures under applicable local law have been used, and there is no person eligible to serve as a voluntary representative pursuant to paragraph (e) of this section, then a creditor may make a claim for the amount of the debt, providing the debt has not been barred by applicable local law.

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS HELD IN LEGACY TREASURY DIRECT

■ 11. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

■ 12. Revise the heading for part 357 to read as set forth above.

■ 13. In part 357, the phrases ''TREASURY DIRECT,'' ''Treasury Direct,'' and ''TreasuryDirect'' are revised to read ''Legacy Treasury Direct'' wherever they appear.

■ 14. Amend § 357.0 by revising paragraph (c) to read as follows:

§ 357.0 Book-entry systems.

* * * * *

(c) *TreasuryDirect system.* TreasuryDirect is an Internet-based book-entry system maintained by the Department of the Treasury. The regulations governing TreasuryDirect are found at part 363 of this chapter. Legacy Treasury Direct is a separate, non-Internet-based book-entry system for marketable Treasury securities only.

■ 15. Amend § 357.2 by adding the definition of ''Voluntary representative'' in alphabetical order, to read as follows:

§ 357.2 Definitions.

* * * * *

Voluntary representative means the person qualified by the Department of the Treasury to accept payment or direct distribution of a decedent's securities pursuant to § 357.28.

■ 16. Amend § 357.28 by revising paragraph (c) to read as follows:

§ 357.28 Transaction requests.

* * * * *

(c) *Representatives.*

(1) *General.* Any representative of an owner's estate, other than a trustee, may execute a transaction request form if the representative submits to the Department properly authenticated evidence of the authority to act. The evidence will not be accepted if dated more than one year prior to the date of submission of the transaction request.

(2) *Decedent's estate has been settled previously.* If a decedent's estate has been settled previously through judicial proceedings, the persons entitled may

make a transaction request. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(3) *Special provisions under the law of the jurisdiction of the decedent's domicile.* If there is no formal or regular administration and no representative of the decedent's estate is to be appointed, the person appointed to receive or distribute the assets of a decedent's estate without regular administration under applicable local law summary or small estates procedures may make a transaction request. Appropriate evidence will be required.

(4) *When administration is required.* If the total redemption value of the Treasury securities and undelivered payments, if any, held directly on our records that are the property of the decedent's estate is greater than $100,000, administration of the decedent's estate will be required. The redemption value of savings bonds and the principal amount of marketable securities will be used to determine the value of securities, and will be determined as of the date of death. Administration may also be required at the discretion of the Department for any case.

(5) *Voluntary representative for small estates of decedents that are not being otherwise administered.* (i) *General.* A voluntary representative is a person qualified according to paragraph (c)(5)(iii) of this section, to make a transaction request. The voluntary representative procedures are for the convenience of the Department; entitlement to the decedent's securities and held payments, if any, is determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. Voluntary representative procedures may be used only if:

(A) There has been no administration, no administration is contemplated, and no summary or small estate procedures under applicable local law have been used;

(B) The total redemption value of the Treasury securities and held payments, if any, that are the property of the decedent's estate is $100,000 or less as of the date of death; and

(C) There is a person eligible to serve as the voluntary representative according to paragraph (c)(5)(iii) of this section.

(ii) *Authority of voluntary representative.* A voluntary representative may make a transaction request to distribute the securities to or for the benefit of the persons entitled by laws of the jurisdiction in which the decedent was domiciled at the date of death.

(iii) *Order of precedence for voluntary representative.* An individual eighteen years of age or older may act as a voluntary representative according to the following order of precedence: A surviving spouse; if there is no surviving spouse, then a child of the decedent; if there are none of the above, then a descendant of a deceased child of the decedent; if there are none of the above, then a parent of the decedent; if there are none of the above, then a brother or sister of the decedent; if there are none of the above, then a descendant of a deceased brother or sister of the decedent; if there are none of the above, then a next of kin of the decedent, as determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. As used in this order of precedence, child means a natural or adopted child of the decedent.

(iv) *Liability.* By serving, the voluntary representative warrants that the distribution of securities or proceeds is to or on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death. The United States is not liable to any person for the improper distribution of securities or proceeds. Upon distribution of the securities or proceeds at the request of the voluntary representative, the United States is released to the same extent as if it had paid or delivered to a representative of the estate appointed pursuant to the law of the jurisdiction in which the decedent was domiciled at the date of death. The voluntary representative shall indemnify and hold harmless the United States and all creditors and persons entitled to the estate of the decedent. The amount of the indemnification is limited to an amount no greater than the value received by the voluntary representative.

(v) *Creditor.* If there has been no administration, no administration is contemplated, no summary or small estate procedures under applicable local law have been used, and there is no person eligible to serve as a voluntary representative pursuant to paragraph (e) of this section, then a creditor may make a claim for payment of the amount of the debt, providing the debt has not been barred by applicable local law.

* * * * *

PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

■ 17. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

■ 18. Amend § 360.2 by adding paragraph (n) to read as follows:

§ 360.2 Definitions.

* * * * *

(n) *Voluntary representative* means the person qualified by the Department of the Treasury to request payment or distribution of a decedent's savings bonds pursuant to § 360.71.

■ 19. Amend § 360.70 by revising the second sentence of the introductory paragraph, to read as follows:

§ 360.70 General rules governing entitlement.

* * * Appropriate proof of death will be required.

* * * * *

■ 20. Revise § 360.71 to read as follows:

§ 360.71 Decedent's estate.

(a) *Estate is being administered.* (1) A legal representative of a deceased owner's estate may request payment of savings bonds to the estate, or may distribute the savings bonds to the persons entitled.

(2) Appropriate proof of appointment for the legal representative of the estate is required. Letters of appointment must be dated not more than one year prior to the date of submission of the letters of appointment.

(b) *Estate has been settled previously.* If the estate has been settled previously through judicial proceedings, the persons entitled may request payment or reissue of the savings bonds. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence is required.

(c) *Special provisions under the law of the jurisdiction of the decedent's domicile.* If there is no formal or regular administration and no representative of the estate is to be appointed, the person appointed to receive or distribute the assets of a decedent's estate without regular administration under applicable local law summary or small estates procedures may request payment or reissue of savings bonds. Appropriate evidence is required.

(d) *When administration is required.* If the total redemption value of the Treasury securities and undelivered payments, if any, held directly on our records that are the property of the decedent's estate is greater than $100,000, administration of the decedent's estate will be required. The redemption value of savings bonds and the principal amount of marketable securities will be used to determine the

value of securities, and will be determined as of the date of death. Administration may also be required at the discretion of the Department for any case.

(e) *Voluntary representative for small estates that are not being otherwise administered.* (1) *General.* A voluntary representative is a person qualified according to paragraph (e)(3) of this section, to request payment or distribution of a decedent's savings bonds. The voluntary representative procedures are for the convenience of the Department; entitlement to the decedent's savings bonds and held payments, if any, is determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. Voluntary representative procedures may be used only if:

(i) There has been no administration, no administration is contemplated, and no summary or small estate procedures under applicable local law have been used;

(ii) The total redemption value of the Treasury securities and held payments, if any, held directly on our records that are the property of the decedent's estate is $100,000 or less as of the date of death; and

(iii) There is a person eligible to serve as the voluntary representative according to paragraph (e)(3) of this section.

(2) *Authority of voluntary representative.* A voluntary representative may:

(i) Redeem the decedent's savings bonds that are eligible for redemption on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death;

(ii) Distribute the decedent's savings bonds to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death.

(3) *Order of precedence for voluntary representative.* An individual eighteen years of age or older may act as a voluntary representative according to the following order of precedence: A surviving spouse; if there is no surviving spouse, then a child of the decedent; if there are none of the above, then a descendant of a deceased child of the decedent; if there are none of the above, then a parent of the decedent; if there are none of the above, then a brother or sister of the decedent; if there are none of the above, then a descendant of a deceased brother or sister of the decedent; if there are none of the above, then a next of kin of the decedent, as determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. As used in this order of precedence, child means a natural or adopted child of the decedent.

(4) *Liability.* By serving, the voluntary representative warrants that the distribution of payments or savings bonds is to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death. The United States is not liable to any person for the improper distribution of payments or securities. Upon payment or distribution of the securities at the request of the voluntary representative, the United States is released to the same extent as if it had paid or delivered to a representative of the estate appointed pursuant to the law of the jurisdiction in which the decedent was domiciled at the date of death. The voluntary representative shall indemnify and hold harmless the United States and all creditors and persons entitled to the estate of the decedent. The amount of the indemnification is limited to an amount no greater than the value received by the voluntary representative.

(f) *Creditor.* If there has been no administration, no administration is contemplated, no summary or small estate procedures under applicable local law have been used, and there is no person eligible to serve as a voluntary representative pursuant to paragraph (e) of this section, then a creditor may make a claim for payment of the amount of the debt, providing the debt has not been barred by applicable local law.

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT

■ 21. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*; 31 U.S.C. 3121, *et seq.*

■ 22. Revise the heading for part 363 to read as set forth above.

■ 23–24. In part 363, revise all references to ''New Treasury Direct'' to read ''TreasuryDirect'' wherever they appear.

■ 25. Amend § 363.6 by:

■ a. Removing all references to ''§ 363.15'' and adding in their places the reference ''§ 363.10'';

■ b. Adding the definition of ''Voluntary representative'' in alphabetical order;

■ c. Revising the definition of ''Final maturity of a savings bond;''

■ d. Revising the definition of ''Minor linked account,'' and

■ e. Revising footnote 1 to read as follows:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Final maturity of a savings bond means the date beyond which an unredeemed savings bond no longer earns interest.[1]

* * * * *

Minor account means an account that a custodian controls on behalf of a minor, that is linked to the custodian's primary account. (See §§ 363.10 and 363.27 for more information about minor accounts.)

* * * * *

Voluntary representative means the person qualified by the Department of the Treasury to accept payment or direct distribution of a decedent's securities pursuant to § 363.44.

* * * * *

[1] Series EE and Series I savings bonds currently have an original maturity period of 20 years and an extended maturity period of 10 years beyond original maturity during which the bonds continue to earn interest.

■ 26. Revise the heading for Subpart B to read as follows:

Subpart B—General Provisions Governing Securities Held in TreasuryDirect

■ 26a. Transfer §§ 363.9 through 363.14 to subpart B.

■ 27. Add § 363.9 to read as follows:

§ 363.9 What does this subpart cover?

This subpart provides general rules governing securities held within the TreasuryDirect system. Provisions in the subparts governing specific securities that conflict with these general rules will supersede these general rules.

■ 28. Redesignate §§ 363.15 and 363.16 as §§ 363.10 and 363.11, respectively.

■ 29. Add § 363.12 to read as follows:

§ 363.12 Who may purchase and hold book-entry securities in TreasuryDirect?

(a) A TreasuryDirect account owner may purchase and hold securities through his or her account.

(b) We do not permit a legally incompetent person to open an account, purchase securities, or convert savings bonds once we have been provided with an order from a court with appropriate jurisdiction determining incompetence to perform such activities.

(c) We do not permit a legal representative, a legal guardian, or a voluntary representative to purchase securities on behalf of the estate of a decedent or an incompetent person.

(d) We may reject any application for the purchase of a security, in whole or

in part. We may refuse to issue a security in any case or class of cases, if we deem the action to be in the public interest. Our decision in any such respect is final.

■ 30. Redesignate §§ 363.17 through 363.23 as §§ 363.13 through 363.19, respectively.

■ 31. Add new § 363.20 to read as follows:

§ 363.20 What do I need to know about the forms of registration that are available for purchases of securities through my TreasuryDirect account?

(a) *General principles.* (1) Registration must express the actual ownership of, and interest in, the security. Registration conclusively establishes ownership of a security.

(2) You must provide a last name and a first name for each individual included in the registration of the security.

(3) You must provide the valid taxpayer identification number for each person named in the registration of the security.

(b) *Forms of registration.* The forms of registration available for purchases of securities made through your TreasuryDirect account are single owner, owner with beneficiary, and primary owner with secondary owner, unless the forms of registration available for a security are specifically limited by the subpart governing that security.

(c) *Single owner.* (1) A single owner is the individual named in the registration of a book-entry security or a converted savings bond without a beneficiary, secondary owner, or coowner.

(2) A single owner may add a beneficiary or secondary owner.

(3) A single owner may conduct permitted online transactions on securities held in his or her account.

(4) Upon the death of the single owner, his or her estate is entitled to the security. In determining entitlement, the law of the decedent's domicile will be followed.

(5) Registration example: ''John Doe, SSN 123–45–6789.''

(d) *Owner with beneficiary.* (1) The purchaser must be named as the owner with another individual as beneficiary.

(2) The owner may remove or change the beneficiary without the consent of the beneficiary.

(3) The owner may conduct permitted online transactions on securities held in his or her account without the consent of the beneficiary.

(4) The beneficiary has no ownership rights to the security during the owner's lifetime. Upon the death of the owner, the security becomes the property of the surviving beneficiary, despite any attempted testamentary disposition or any applicable local law to the contrary.

(5) If the beneficiary does not survive the owner, the security belongs to the estate of the owner.

(6) If both the owner and the beneficiary die under conditions where it cannot be established, either by presumption of law or otherwise, who died first, the security is the property of the estate of the owner.

(7) In order for the beneficiary to obtain the security or the redemption proceeds after the death of the owner, the beneficiary must provide proof of death of the owner. If the beneficiary has a TreasuryDirect account, the security will be transferred to that account. If the beneficiary does not have an account, he or she may establish an account. Alternatively, a beneficiary named on a savings bond may request redemption. If the beneficiary requests redemption, he or she must provide ACH instructions for the payment.

(8) Registration example: ''John Doe, SSN 123–45–6789 POD (payable on death to) Jane Doe, SSN 987–65–4321.''

(e) *Primary owner with secondary owner.* (1) The purchaser must be named in the registration as the primary owner with another individual as secondary owner.

(2) The primary owner holds the securities in his or her account and may view or conduct permitted online transactions in the securities.

(3) The primary owner may remove the secondary owner without the consent of the secondary owner.

(4) The secondary owner has no rights to view or conduct transactions in any security unless the primary owner gives the secondary owner these rights.

(5) The primary owner may give the secondary owner the right to view any security or rights to view and conduct transactions in any security online from the account of the secondary owner.

(6) Once the right to conduct transactions in a security has been given to the secondary owner, the primary owner may view and conduct transactions in the security from his or her account, and the secondary owner may view and conduct transactions in the security using his or her own account.

(7) The primary owner may revoke any rights previously given to the secondary owner at any time.

(8) Upon the death of either the primary or secondary owner, the security becomes the property of the survivor, despite any attempted testamentary disposition or any applicable local law to the contrary.

(9) If both the primary and the secondary owner die under conditions where it cannot be established, either by presumption of law or otherwise, who died first, the security is the property of the estate of the primary owner.

(10) In order for the secondary owner to obtain the security or the security proceeds after the death of the primary owner, the secondary owner must provide proof of death of the primary owner. If the secondary owner has a TreasuryDirect account, the security will be transferred to that account. If the secondary owner does not have an account, he or she may establish an account. Alternatively, a secondary owner named on a savings bond may request redemption. If the secondary owner requests redemption, he or she must provide ACH instructions.

(11) Registration example: ''John Doe, SSN 123–45–6789 with Joseph Doe, SSN 987–65–4321.''

■ 32. Redesignate §§ 363.24 as § 363.21.

■ 33. Add new § 363.22 to read as follows:

§ 363.22 Who has the right to conduct online transactions in book-entry securities?

(a) *Single owner form of registration.* A single owner can conduct transactions in securities held in his or her TreasuryDirect account.

(b) *Owner with beneficiary form of registration.* The owner can conduct transactions in securities held in his or her TreasuryDirect account. The beneficiary has no rights during the lifetime of the owner and therefore cannot conduct transactions in the securities.

(c) *Primary owner with secondary owner form of registration.* The primary owner can conduct transactions in securities held in his or her TreasuryDirect account. The secondary owner can redeem savings bonds using his or her TreasuryDirect account providing the secondary owner has the right to redeem at the time of the transaction.

(d) *Converted savings bonds.* The rules for transactions governing converted savings bonds are contained in subpart E of this part.

§§ 363.23 and 363.24 [Reserved]

■ 34. Add and reserve new §§ 363.23 and 363.24.

■ 35. Add §§ 363.28 and 363.29 to read as follows:

§ 363.28 Does Public Debt reserve the right to require that any TreasuryDirect transaction be conducted in paper form?

We reserve the right to require any transaction to be conducted in paper

form. Signatures on paper transactions must be certified or guaranteed as provided in § 363.43.

§ 363.29 May Treasury close an account, suspend transactions in an account, or refuse to open an account?

We reserve the right to take any of the following actions if, in our sole discretion, we deem the action to be in the best interests of the United States:

(a) Refuse to open an account for any person;

(b) Close any existing account;

(c) Suspend transactions with respect to an account or any security held in an account; or

(d) Take any other action with regard to any account that we deem necessary, if not inconsistent with existing law and existing rights.

■ 36. Amend § 363.42 by removing the words ''Series I'' from the section.

■ 37. Amend § 363.43 by revising paragraph (a)(4)(i) to read as follows:

§ 363.43 What are the procedures for certifying my signature on an offline application for a TreasuryDirect account, or on an offline transaction form?

(a) * * * * *

(4) * * * * *

(i) We require a statement that the person executing the assignment is one whose signature the officer is authorized to certify under our regulations.

* * * * *

■ 38. Add §§ 363.44, 363.45, and 363.46 to read as follows:

§ 363.44 What happens when a TreasuryDirect account owner dies and the estate is entitled to securities held in the account?

(a) *Estate is being administered.* (1) A legal representative of a deceased owner's estate may request payment of securities, if the securities are eligible for payment, to the estate or to the persons entitled, or may request transfer of the securities to the TreasuryDirect account of the persons entitled, if the securities are eligible for transfer.

(2) We will require appropriate proof of appointment for the legal representative of the estate. Letters of appointment must be dated not more than one year prior to the date of submission of the letters of appointment.

(3) The legal representative of the estate may not purchase securities on behalf of the estate.

(4) If payment is requested, we will require ACH instructions to process the request.

(b) *Estate has been settled previously.* If the estate has been settled previously through judicial proceedings, the persons entitled may request payment of securities, if the securities are eligible for redemption, or may transfer the securities to the TreasuryDirect accounts of the persons entitled, if the securities are eligible for transfer. We will require a certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence. If payment is requested, we will require ACH instructions to process the request.

(c) *Special provisions under the law of the jurisdiction of the decedent's domicile.* If there is no formal or regular administration and no representative of the estate is to be appointed, the person appointed to receive or distribute the assets of a decedent's estate without regular administration under summary or small estates procedures under applicable local law may request payment of securities, if the securities are eligible for redemption, or may transfer the securities to or on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death, if the securities are eligible for transfer. We will require appropriate evidence. If payment is requested, we will require ACH instructions to process the request.

(d) *When administration is required.* If the total redemption value of the Treasury securities and undelivered payments, if any, held directly on our records that are the property of the decedent's estate is greater than $100,000, administration of the decedent's estate will be required. The redemption value of savings bonds and the principal amount of marketable securities will be used to determine the value of securities, and will be determined as of the date of death. Administration may also be required at the discretion of the Department for any case.

(e) *Voluntary representative for small estates that are not being otherwise administered.* (1) *General.* A voluntary representative is a person qualified according to paragraph (e)(3) of this section, to redeem or transfer a decedent's securities. The voluntary representative procedures are for the convenience of the Department; entitlement to the decedent's securities and held payments, if any, is determined by the law of the jurisdiction in which the decedent was domiciled at the date of death. Voluntary representative procedures may be used only if:

(i) There has been no administration, no administration is contemplated, and no summary or small estate procedures under applicable local law have been used;

(ii) The total redemption value of the Treasury securities and held payments, if any, held directly on our records that are the property of the decedent's estate is $100,000 or less, as of the date of death, and

(iii) There is a person eligible to serve as the voluntary representative according to paragraph (e)(3) of this section.

(2) *Authority of voluntary representative.* A voluntary representative may:

(i) Redeem the decedent's savings bonds that are eligible for redemption. Payment may be made to the voluntary representative on behalf of or directly to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death;

(ii) Transfer the decedent's securities to the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death.

(3) *Order of precedence for voluntary representative.* An individual eighteen years of age or older may act as a voluntary representative according to the following order of precedence: a surviving spouse; if there is no surviving spouse, then a child of the decedent; if there are none of the above, then a descendant of a deceased child of the decedent; if there are none of the above, then a parent of the decedent; if there are none of the above, then a brother or sister of the decedent; if there are none of the above, then a descendant of a deceased brother or sister of the decedent; if there are none of the above, then a next of kin of the decedent, as determined by the laws of the decedent's domicile at the date of death. As used in this order of precedence, child means a natural or adopted child of the decedent.

(4) *Liability.* By serving, the voluntary representative warrants that the distribution of payments or securities are to or on behalf of the persons entitled by the law of the jurisdiction in which the decedent was domiciled at the date of death. The United States is not liable to any person for the improper distribution of payments or securities. Upon payment or transfer of the securities to the voluntary representative, the United States is released to the same extent as if it had paid or delivered to a representative of the estate appointed pursuant to the law of the jurisdiction in which the decedent was domiciled at the date of death. The voluntary representative shall indemnify and hold harmless the United States and all creditors and persons entitled to the estate of the decedent. The amount of the indemnification is limited to an amount

no greater than the value received by the voluntary representative.

(5) *Creditor.* If there has been no administration, no administration is contemplated, no summary or small estate procedures under applicable local law have been used, and there is no person eligible to serve as a voluntary representative pursuant to paragraph (e) of this section, then a creditor may make a claim for payment of the amount of the debt, providing the debt has not been barred by applicable local law.

§ 363.45 What are the rules for judicial and administrative actions involving securities held in TreasuryDirect?

(a) *Notice of adverse claim or pending judicial proceedings.* We are not subject to and will not accept a notice of an adverse claim or notice of pending judicial proceedings involving a security held in TreasuryDirect.

(b) *Competing claims to a security.* The Department of the Treasury, Public Debt, and the Federal Reserve Banks are not proper defendants in a judicial proceeding involving competing claims to a security held in TreasuryDirect.

(c) *Divorce decree.* We will recognize a divorce decree that either disposes of a security held in TreasuryDirect or ratifies a property settlement agreement disposing of a security that is the property of either of the parties. If the divorce decree does not set out the terms of the property settlement agreement, we will require a certified copy of the agreement.

(d) *Final court order.* We will recognize a final order entered by a court that affects ownership rights in a security held in TreasuryDirect only to the extent that the order is consistent with the provisions of this part. The owner of the security must be a party to the proceedings.

(e) *Levy to satisfy money judgment.* We will honor a transaction request submitted by a person appointed by a court and having authority under an order of a court to dispose of a security held in TreasuryDirect pursuant to a money judgment against the owner of the security, as owner is defined in section 363.6 of this part. In the case of savings bonds, we will only make payment pursuant to the court order to the extent of the money judgment. We will not transfer the savings bonds.

(f) *IRS levy.* We will honor an IRS notice of levy under section 6331 of the Internal Revenue Code with respect to:

(1) The owner, as owner is defined in section 363.6 of this part; and

(2) A secondary owner, if the secondary owner has the right to conduct transactions in a security at the date and time the notice of levy is delivered to Public Debt.

(g) *Trustee in bankruptcy, a receiver of an insolvent's estate, a receiver in equity, or a similar court officer.* We will honor a transaction request submitted by a trustee in bankruptcy, a receiver of an insolvent's estate, a receiver in equity, or a similar court officer, if the original court order is against the owner, as owner is defined in § 363.6 of this part. In the case of savings bonds, we will only make payment. We will not transfer the savings bonds.

(h) *Court order that attempts to defeat or impair survivorship rights.* We will not recognize a court order that attempts to defeat or impair the survivorship rights of a beneficiary, secondary owner, coowner of a converted savings bond, or the registered owner of an undelivered gift security held in TreasuryDirect.

§ 363.46 What evidence is required to establish the validity of judicial proceedings?

(a) We will require certified copies of the final judgment, decree, or court order, and any necessary supplementary proceedings.

(b) A transaction request by a trustee in bankruptcy or a receiver of an insolvent's estate must be supported by evidence of appointment and qualification.

(c) A transaction request by a receiver in equity or a similar court officer (other than a receiver of an insolvent's estate) must be supported by a copy of an order that authorizes the receiver or similar court officer to take possession and control of the security.

■ 39. Add §§ 363.47 to read as follows:

§ 363.47 Will Public Debt pay Treasury securities pursuant to a forfeiture proceeding?

(a) *General.* We will honor a judicial or administrative forfeiture order or declaration of forfeiture submitted by a federal agency. We will rely exclusively upon the information provided by the Federal forfeiting agency and will not make any independent evaluation of the validity of the forfeiture order, the request for payment, or the authority of the individual signing the transaction request. The amount to be paid or transferred is limited to the value of the security as of the date of forfeiture.

(b) *Definition of special terms relating to forfeitures.*

Contact point means the individual designated by the Federal investigative agency, United States Attorney's Office, or forfeiting agency, to receive referrals from Public Debt.

Forfeiting agency means the federal law enforcement agency responsible for the forfeiture.

Forfeiture means the process by which property may be forfeited by a federal agency. Administrative forfeiture is forfeiture by a federal agency without judicial proceedings resulting in a declaration of forfeiture; judicial forfeiture is a forfeiture through either a civil or criminal proceeding in a United States District Court resulting in a final judgment and order of forfeiture.

(c) *Procedures for a forfeiting agency to request forfeiture of Treasury securities.* A forfeiting agency must request forfeiture. An individual authorized by the forfeiting agency must sign the transaction request. The request must be mailed to the Department of the Treasury, Bureau of the Public Debt, Parkersburg, WV 26106–7015.

(d) *Public Debt procedures upon receipt of forfeiture request.* Upon receipt and review of the transaction request, we will make payment to the forfeiture fund specified, if the security is eligible for payment, or we will transfer the security pursuant to the transaction request. We will record the forfeiture, the forfeiture fund into which the proceeds were paid or the security transfer records, the contact point, and any related information.

(e) *Inquiries from previous owner.* All inquiries or claims from the previous owner will be referred to the contact point of the forfeiting agency. We will tell the person who inquired that we referred his or her inquiry to the contact point. We will not investigate the inquiry. We will defer to the forfeiting agency's determination of the appropriate course of action, including settlement where appropriate. Any settlement will be paid from the forfeiture fund into which the proceeds were deposited.

§ 363.51 [Removed and reserved]

■ 40. Remove and reserve § 363.51.

■ 41. Amend § 363.54 by revising the heading to read as follows:

§ 363.54 What is the minimum amount of a book-entry savings bond that I must hold in my account?

* * * * *

■ 42. Amend § 363.55 by revising paragraph (a) to read as follows:

§ 363.55 May I transfer my book-entry savings bond to another person?

(a) You may transfer a savings bond or a portion of a savings bond to the TreasuryDirect account of another individual in a minimum amount of $25. The transfer may only be made as a gift or in response to a final judgment,

court order, divorce decree, or property settlement agreement. You must certify online that the transfer is a gift or a specified exception.

* * * * *

■ 43. Remove the undesignated center heading ''Registration'', located prior to 363.65.

§§ 363.65–363.69 [Removed and reserved]

■ 44. Remove and reserve §§ 363.65, 363.66, 363.67, 363.68, and 363.69.

■ 45. Amend § 363.83 by revising the heading to read as follows:

§ 363.83 May an account owner transfer a book-entry savings bond to a minor?

* * * * *

■ 46. Remove the undesignated center heading ''Deceased Owners,'' located prior to § 363.90.

§ 363.90 [Removed and reserved]

■ 47. Remove and reserve § 363.90.

■ 48. Amend § 363.95 by revising the heading and the introductory text to read as follows:

§ 363.95 How may I give a book-entry savings bond as a gift?

You may give a book-entry savings bond as a gift in two ways:

* * * * *

■ 49. Amend § 363.97 by revising the heading to read as follows:

§ 363.97 What do I need to know if I transfer a book-entry savings bond to another person as a gift?

* * * * *

■ 50. Remove the undesignated center heading ''Transactions,'' located prior to § 363.105.

§§ 363.105–363.107 [Removed and reserved]

■ 51. Remove and reserve §§ 363.105, 363.106, and 363.107.

■ 52. Remove the undesignated center heading ''Judicial and Administrative Proceedings,'' located prior to § 363.110.

§§ 363.110–363.119 [Removed and reserved]

■ 53. Remove and reserve §§ 363.110 through 363.119.

■ 54. Amend § 363.125 by revising the heading to read as follows:

§ 363.125 How is payment made on a book-entry savings bond?

* * * * *

■ 55. Remove § 363.146.

§§ 363.147–363.149 [Removed and reserved]

■ 56. Remove and reserve §§ 363.147–363.149.

§ 363.150 [Reserved]

■ 57. Redesignate § 363.150 as § 363.146 and reserve § 363.150.

§§ 363.151–363.152 [Removed and reserved]

■ 58. Remove and reserve §§ 363.151 and 363.152.

■ 59. Amend § 363.160 by revising paragraph (a)(4) to read as follows:

§ 363.160 What subparts govern the conversion of definitive savings bonds?

(a) * * *

(4) Converted savings bonds of all series that are held as gift bonds by the person who converted the bonds.

* * * * *

■ 60. Amend § 363.165 by revising the heading and the first sentence of paragraph (b) to read as follows:

§ 363.165 What happens when I convert a savings bond that is registered in my name as the owner, either coowner, or the owner with a beneficiary?

* * * * *

(b) *Savings bond that has reached final maturity.* A savings bond that has reached final maturity and is registered in the name of the Treasury Direct account owner as single owner, either coowner, or owner with beneficiary, will be converted to a book-entry bond and automatically redeemed. * * *

■ 61. Amend § 363.166 by:

■ a. Revising the heading and the first sentence of paragraph (b)(1); and

■ b. Revising the heading and first sentence of paragraph (b)(2), to read as follows:

§ 363.166 What happens when I convert a savings bond that is not registered in my name as owner, either coowner, or owner with beneficiary (including a bond registered in the name of a minor)?

* * * * *

(b) *Savings bond that has reached final maturity.* (1) *General.* A savings bond that has reached final maturity and is registered in the name of someone other than the account owner will be converted to a book-entry bond, released as a gift bond into the account owner's conversion linked account, and automatically redeemed. * * *

(2) *Delivery of bond proceeds to registered owner.* If the gift bond has reached final maturity and has been automatically redeemed, then the Treasury Direct account owner may direct that the held redemption proceeds be delivered to the Treasury Direct account of the registered owner (or minor linked account, if the registered owner is a minor), where we will use the proceeds to purchase a certificate of indebtedness in the name of the registered owner. * * *

§§ 363.172–363.174 [Removed and reserved]

■ 62. Remove and reserve §§ 363.172, 363.173, and 363.174.

§ 363.175 [Removed and reserved]

■ 63. Remove and reserve §§ 363.175.

§ 363.177 [Removed and reserved]

■ 64. Remove and reserve §§ 363.177.

§ 363.178 [Removed and reserved]

■ 65. Remove and reserve §§ 363.178.

Dated: September 26, 2005.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 05–19551 Filed 9–27–05; 12:41 pm]

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 356, 357, and 363

[Docket No. BPD–CC–05–2]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93); Regulations Governing Book-Entry Treasury Bonds, Notes and Bills Held in Legacy Treasury Direct®; Regulations Governing Securities Held in TreasuryDirect®

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: TreasuryDirect is an account-based, book-entry, online system for purchasing, holding, and conducting transactions in Treasury securities. To date, the system has only been available for the purchase and holding of savings bonds and certificates of indebtedness. The Department of the Treasury (hereinafter referred to as ''Treasury'' or ''We'') is amending Regulations Governing Securities Held in TreasuryDirect to add marketable Treasury securities to the securities that may be purchased and held in TreasuryDirect and to provide the terms and conditions for marketable Treasury securities held in the system. We are amending Regulations Governing Book-Entry Treasury Bonds, Notes and Bills Held in Legacy Treasury Direct to provide for the transfer of securities between Legacy Treasury Direct and TreasuryDirect. We are also amending the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds to make the changes necessary to

accommodate participation in Treasury marketable securities auctions for securities to be held in either the TreasuryDirect or the Legacy Treasury Direct® system. We are also eliminating the ability to bid competitively through Legacy Treasury Direct. These final amendments benefit individual investors by allowing them to purchase, hold and conduct transactions in marketable Treasury securities through the TreasuryDirect system.

DATES: Effective Date: September 30, 2005.

ADDRESSES: You can download this final rule at the following Internet addresses: *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr.*

FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov* for information on the TreasuryDirect and Legacy Treasury Direct systems.

Chuck Andreatta, Associate Director, Government Securities Regulations Staff, Bureau of the Public Debt, at (202) 504–3632 or *govsecreg@bpd.treas.gov* for information on Treasury marketable securities auction rules (31 CFR part 356).

Susan Klimas, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov* for information on regulations governing TreasuryDirect and Legacy Treasury Direct (31 CFR parts 357 and 363).

SUPPLEMENTARY INFORMATION:

TreasuryDirect® is an account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities. Currently, book-entry Series EE and Series I savings bonds and certificates of indebtedness are offered for purchase. In addition, definitive savings bonds may be converted to book-entry savings bonds through TreasuryDirect and held in the system. We are issuing this amendment to 31 CFR parts 363, 357, and 356 to provide for the purchase and holding of marketable Treasury securities in TreasuryDirect.

31 CFR Part 363. We are amending 31 CFR part 363, Regulations Governing Securities Held in TreasuryDirect, to add marketable Treasury securities to the securities that may be held in the TreasuryDirect system.[1] The previous subpart F is redesignated as subpart H, and a new subpart F has been added to address the unique terms and conditions for holding marketable Treasury securities in TreasuryDirect. The provisions in subpart B, which apply to all securities held in TreasuryDirect, will apply to marketable Treasury securities as well. Therefore, the current provisions in subpart B relating to rules of the system, registrations, administrative and judicial proceedings, and decedents' estates, that are applicable to all securities in TreasuryDirect, will apply to marketable Treasury securities.

A TreasuryDirect account owner can submit a noncompetitive bid for eligible marketable Treasury securities online through his or her account. Marketable Treasury securities that are eligible for purchase through a TreasuryDirect account are those that are available for purchase through the TreasuryDirect Web site. Any registration provided in subpart B for securities held in TreasuryDirect is available for marketable Treasury securities.

Upon the purchase of a marketable Treasury security, there will be a period of 45 calendar days after the issue date of the security, or the term of the security, whichever is less, during which the security may not be transferred. This holding period is to prevent a loss to Treasury in the event of a returned or unauthorized debit. In addition, and for a similar reason, we are amending subpart D, relating to certificates of indebtedness, to provide for a holding period of 5 business days after a debit entry for the purchase of a certificate of indebtedness. During this holding period the certificate of indebtedness may only be redeemed to purchase a new security and may not be redeemed for cash.

This final rule provides for the transfer of marketable Treasury securities among the commercial book-entry system, the Legacy Treasury Direct system, and the TreasuryDirect system. Online transfers available for marketable Treasury securities are transfers between TreasuryDirect accounts, transfers to other book-entry systems, and transfers to our agent for sale on the open market (Sell Direct), in increments of $1000. Any eligible marketable book-entry Treasury bill, note, or bond may be transferred into and held in a TreasuryDirect account.

Under the provisions of this amendment, an account owner may reinvest a matured security held in TreasuryDirect by directing that the redemption proceeds of the security be used to purchase a certificate of indebtedness, and then using the redemption proceeds of the certificate of indebtedness to purchase a new marketable Treasury security.

The process in TreasuryDirect for handling undeliverable payments of either principal or interest will benefit both investors and Treasury. Undeliverable proceeds will be used to purchase a certificate of indebtedness in the name of the account owner. The account owner can then directly access the certificate of indebtedness online through the account, rather than having to contact Treasury to make arrangements for delivery of the payment.

A four-business day closed book period will be in effect prior to the date a marketable security payment is made. This means that certain transactions made during the closed book period will be delayed until after the closed book period is completed and the payment is made.

31 CFR Part 357. We are amending 31 CFR part 357, Regulations Governing Book-Entry Treasury Bonds, Notes and Bills Held in Legacy Treasury Direct, to provide that marketable Treasury securities may be transferred between Legacy Treasury Direct and TreasuryDirect.

31 CFR Part 356. 31 CFR part 356, also referred to as the Uniform Offering Circular (UOC), sets out the terms and conditions for the sale and issuance to the public of marketable Treasury bills, notes, and bonds. The UOC, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[2]

This amendment makes changes to the UOC to allow bidders to bid for marketable Treasury securities to be issued in either the TreasuryDirect or

[1] The governing regulations for the TreasuryDirect system, 31 CFR part 363, were originally published as a final rule October 17, 2002 (67 FR 64275). The regulations were subsequently amended May 8, 2003 (68 FR 24793); January 16, 2004 (69 FR 2506); August 16, 2004 (69 FR 50307); March 23, 2005 (70 FR 14940); and September 30, 2005. The TreasuryDirect system was first referred to as New Treasury Direct to distinguish it from an older system for holding book-entry Treasury bills, notes and bonds directly with Treasury, also known as TreasuryDirect. The regulations for the older system are found at 31 CFR part 357. The name of the newer system was changed in the most recent amendment to the TreasuryDirect regulations, and at the same time the name of the older system was changed to Legacy Treasury Direct.

[2] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 411). The circular, as amended, is codified at 31 CFR part 356. A final rule converting the UOC to plain language and making certain other minor changes was published in the **Federal Register** on July 28, 2004 (69 FR 45202).

Legacy Treasury Direct direct-holding systems. The amendment accommodates the differences between the systems, such as the methods of payment. The amendment makes one substantive change, described below, which is that competitive bidding will no longer be allowed for securities to be held in Legacy Treasury Direct.

Competitive bidding will not be allowed for securities to be held in either the new TreasuryDirect system or in Legacy Treasury Direct. Although competitive bidding has been allowed since Legacy Treasury Direct was first implemented in 1986, our experience has been that the volume of such bids has been so low that it does not justify continuing to provide the service. Accordingly, § 356.12 has been amended to stipulate that it will not be a feature of either system going forward.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Because this final rule relates to matters of public contract and procedures for United States securities, notice and public procedure and delayed effective date requirements are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

31 CFR Part 357

Banks, Banking, Bonds, Electronic funds transfers, Government securities, Reporting and recordkeeping requirements.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR chapter II, subchapter B, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 et seq.; 12 U.S.C. 391.

■ 2. Amend part 356 by revising ''TreasuryDirect'' or ''Legacy Treasury Direct'' to read ''TreasuryDirect®'' or ''Legacy Treasury Direct®'' the first time they appear in each section or section heading in the part.

■ 3. Section 356.2 is amended by revising the definitions of ''Autocharge agreement,'' ''Book-entry security,'' Security and ''TreasuryDirect,'' and by adding in alphabetical order the definitions of ''Certificate of indebtedness'' and ''Legacy Treasury Direct'' to read as follows:

§ 356.2 What definitions do I need to know to understand this part?

* * * * *

Autocharge agreement means an agreement in a format acceptable to Treasury between a submitter or clearing corporation and a depository institution that authorizes us to:

(1) Deliver awarded securities to:

(i) The book-entry securities account of a designated depository institution in the commercial book-entry system, or

(ii) An account in Legacy Treasury Direct, and

(2) Charge a funds account of a designated depository institution for the settlement amount of the securities.

* * * * *

Book-entry security means a security that is issued and maintained as an accounting entry or electronic record in either the commercial book-entry system or in one of Treasury's two direct-hold systems—TreasuryDirect or Legacy Treasury Direct. (See § 356.4.)

* * * * *

Certificate of indebtedness means a one-day non-interest-bearing security that may be held in TreasuryDirect and that automatically matures and is rolled over each day until its owner requests that it be redeemed.

* * * * *

Legacy Treasury Direct means a non-Internet-based book-entry system maintained by Treasury for purchasing and holding marketable Treasury securities directly with Treasury. (See 31 CFR part 357.)

* * * * *

Security means a Treasury bill, note, or bond, each as described in this part. Security also means any other obligation we issue that is subject to this part according to its auction announcement. Security includes an interest or principal component under the STRIPS program, as well as a certificate of indebtedness in an investor's TreasuryDirect account.

* * * * *

TreasuryDirect means the book-entry, online system maintained by Treasury for purchasing and holding marketable Treasury securities, nonmarketable savings bonds, and certificates of indebtedness directly with Treasury. (See 31 CFR part 363.)

* * * * *

■ 4. Section 356.4 is amended by revising the introductory text and paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 356.4 What are the book-entry systems in which auctioned Treasury securities may be issued?

There are three book-entry securities systems—the commercial book-entry system, TreasuryDirect, and Legacy Treasury Direct—into which we issue marketable Treasury securities. We maintain and transfer securities in these three book-entry systems at their par amount. Par amounts of Treasury inflation-protected securities do not include adjustments for inflation. Securities may be transferred from one system to the other. See Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR part 357) and 31 CFR part 363.

* * * * *

(b) *TreasuryDirect.* In this system, account holders maintain accounts in a book-entry, online system directly on the records of the Bureau of the Public Debt, Department of the Treasury. Bids for securities to be held in TreasuryDirect are submitted through the Internet.

(c) *Legacy Treasury Direct.* In this system, we maintain the book-entry securities of account holders directly on the records of the Bureau of the Public Debt, Department of the Treasury. Bids for securities to be held in Legacy Treasury Direct are generally submitted directly to us, although such bids may also be forwarded to us by a depository institution or dealer.

■ 5. Section 356.5 is amended by revising the introductory text to read as follows:

§ 356.5 What types of securities does the Treasury auction?

We offer securities under this part exclusively in book-entry form and as direct obligations of the United States

issued under Chapter 31 of Title 31 of the United States Code. The securities are subject to the terms and conditions in this part, the regulations in 31 CFR part 363 (for securities held in TreasuryDirect), the regulations in 31 CFR part 357 (for securities held in the commercial book-entry system and Legacy Treasury Direct), and the auction announcements. When we issue additional securities with the same CUSIP number as outstanding securities, we consider them to be the same securities as the outstanding securities.

* * * * *

■ 6. Section 356.11 is amended by revising the first sentence of paragraph (a)(1), by revising paragraph (c), and by adding a new paragraph (d) to read as follows:

§ 356.11 How are bids submitted in an auction?

(a) *General.* (1) All bids must be submitted using an approved method, which depends on whether you are requesting us to issue the awarded securities in the commercial book-entry system, in TreasuryDirect, or in Legacy Treasury Direct (See § 356.4). * * *

* * * * *

(c) *TreasuryDirect.* You must submit your bids through your established book-entry, online TreasuryDirect account. You may reinvest the proceeds of maturing securities held in TreasuryDirect by directing that the proceeds be used to purchase a certificate of indebtedness in your TreasuryDirect account and by using the proceeds of your certificate of indebtedness to pay for the securities.

(d) *Legacy Treasury Direct.* (1) If you are a submitter and the awarded securities are to be issued in Legacy Treasury Direct, you may submit bids by using one of our approved methods, *e.g.*, computer, automated telephone service, or paper forms. You may also reinvest the proceeds of maturing securities into new securities through the same methods.

(2) If you are submitting bids by paper form, you must use forms authorized by the Bureau of the Public Debt and provide the requested information. We have the option of accepting or rejecting bids on any other form. You are responsible for ensuring that we receive bids in paper form on time. A noncompetitive bid is on time if:

(i) We receive it on or before the issue date, and

(ii) The envelope it arrived in bears evidence, such as a U.S. Postal Service cancellation, that it was mailed prior to the auction date.

(3) If you are submitting a bid by computer or automated telephone service you must be an established Legacy Treasury Direct account holder with a Taxpayer Identification Number.

(4) In contingency situations, such as a power outage, we may accept bids by other means, provided, that in all cases the bids are submitted prior to the relevant bidding deadline by an established Legacy Treasury Direct account holder.

■ 7. Section 356.12 is amended by revising paragraphs (b)(1) and (c)(3) to read as follows:

§ 356.12 What are the different types of bids and do they have specific requirements or restrictions?

* * * * *

(b) *Noncompetitive bids.* (1) *Maximum bid.* You may not bid noncompetitively for more than $5 million. The maximum bid limitation does not apply if you are bidding solely through either a TreasuryDirect or a Legacy Treasury Direct reinvestment request. A request for reinvestment of securities maturing in either TreasuryDirect or Legacy Treasury Direct is a noncompetitive bid.

* * * * *

(c) * * *

(3) *Additional restrictions.* You may not bid competitively in an auction in which you are bidding noncompetitively. You may not bid competitively for securities to be bought through either TreasuryDirect or Legacy Treasury Direct.

■ 8. Section 356.17 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, adding new paragraph (b) and revising newly redesignated paragraphs (c) and (d) to read as follows:

§ 356.17 How and when do I pay for securities awarded in an auction?

* * * * *

(b) *TreasuryDirect.* You must pay for your awarded securities by a debit entry to a deposit account that you are authorized to debit or by using the redemption proceeds of your certificate of indebtedness held in your TreasuryDirect account. Payment by debit entry occurs on the settlement date for the actual settlement amount due. (See § 356.25.)

(c) *Legacy Treasury Direct.* Unless you make other provisions, you must pay by debit entry to a deposit account that you are authorized to debit or submit payment with your bids. Payment by debit entry occurs on the settlement date for the actual settlement amount due. (See § 356.25.) If you are paying with a check or with maturing securities, you must pay separately for any premium, accrued interest, or inflation adjustment as soon as you receive your Payment Due Notice.

(1) *Bidding and payment by computer or by telephone.* If you are bidding by computer or by telephone, you must pay for any securities awarded to you by debit entry to a deposit account. If a depository institution or dealer is submitting your bids for securities to be held in Legacy Treasury Direct, payment may be either by debit entry to a deposit account or by allowing us to charge the Federal Reserve Bank funds account of a depository institution.

(2) *Bidding and payment by paper form.* If you are mailing bids to us on a paper form, you may either enclose your payment with the form or pay for any securities awarded to you by debit entry to a deposit account. For bills, you may pay by depository institution (cashier's or teller's) check, certified check, or currently dated Treasury or fiscal agency check made payable to you. For notes or bonds, in addition to the payment options for bills, you may also pay by personal check. If you submit a personal check, make it payable to Legacy Treasury Direct and mail it with the bid to the Federal Reserve Bank handling your account. In your payment amount you must include the par amount and any announced accrued interest and/or inflation adjustment.

(3) *Payment by maturing securities.* You may use maturing securities held in Legacy Treasury Direct as payment for reinvestments into new securities that we are offering, as long as we receive the appropriate transaction request on time.

(d) *Commercial book-entry system.* Unless you make other provisions, payment of the settlement amount must be by charge to the funds account of a depository institution at a Federal Reserve Bank.

■ 9. Section 356.22 is amended by revising paragraph (a) to read as follows:

§ 356.22 Does the Treasury have any limitations on auction awards?

(a) *Awards to noncompetitive bidders.* The maximum award to any noncompetitive bidder is $5 million. This limit does not apply to bidders bidding solely through TreasuryDirect or Legacy Treasury Direct reinvestment requests.

* * * * *

■ 10. Section 356.25 is amended by revising paragraphs (a) and (b), redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising newly redesignated paragraph (d) to read as follows:

§ 356.25 How does the settlement process work?

* * * * *

(a) *Payment by debit entry to a deposit account.* If you are paying by debit entry to a deposit account as provided for in § 356.17 (b) and (c), we will charge the settlement amount to the specified account on the issue date.

(b) *Payment by authorized charge to a funds account.* Where the submitter's method of payment is an authorized charge to the funds account of a depository institution as provided for in § 356.17 (c)(1) and (d), we will charge the settlement amount to the specified funds account on the issue date.

(c) *Payment through a certificate of indebtedness.* If you are paying with the redemption proceeds of your certificate of indebtedness as provided for in § 356.17(b), we will redeem the certificate of indebtedness for the settlement amount of the security and apply the proceeds on the issue date.

(d) *Payment with bids.* If you paid the par amount with your bids as provided for in § 356.17 (c)(2), you may have to pay an additional amount, or we may have to pay an amount to you, as follows:

(1) *When we owe an amount to you.* If the amount you paid is more than the settlement amount, we will refund the balance to you after the auction. This will generally occur if you submit payment with your bids. A typical example would be an auction where the price is a discount from par and there is no accrued interest.

(2) *When you must remit an additional amount.* If the settlement amount is more than the amount you paid, we will notify you of the additional amount due. You may owe us such an additional amount if the auction calculations result in a premium or if accrued interest or an inflation adjustment is due. If your securities are to be held in TreasuryDirect, we will collect this amount through the same payment method that you previously authorized for the transaction. If your securities are to be held in Legacy Treasury Direct, you will be responsible for remitting this additional amount immediately.

■ 11. Section 356.30 is amended by redesignating current paragraph (c)(2) as paragraph (c)(3) and by adding a new paragraph (c)(2) and revising newly redesignated paragraph (c)(3) to read as follows:

§ 356.30 When does the Treasury pay principal and interest on securities?

* * * * *

(c) * * *

(2) *TreasuryDirect.* We discharge our payment obligations when we make payment to a depository institution for credit to the account specified by the owner of the security, when we make payment for a certificate of indebtedness to be issued and held in the owner's account, or when we make payment according to the instructions of the security's owner or the owner's legal representative.

(3) *Legacy Treasury Direct.* We discharge our payment obligations when we make payment to a depository institution for credit to the account specified by the owner of the security, or when we make payment according to the instructions of the security's owner or the owner's legal representative.

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS HELD IN LEGACY TREASURY DIRECT®

■ 12. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. chapter 31; 12 U.S.C. 391; 5 U.S.C. 301.

■ 13. Amend part 357 by revising ''TreasuryDirect'' or ''Legacy Treasury Direct'' to read ''TreasuryDirect®'' or ''Legacy Treasury Direct®'' the first time they appear in each section or section heading in the part.

■ 14. Amend 357.0 by revising paragraph (a) to read as follows:

§ 357.0 Book-entry systems.

(a) *Treasury securities.* Treasury securities are maintained in one of the following book-entry systems:

(1) *Commercial book-entry system.* The commercial book-entry system is the book-entry system in which Treasury securities are held in a tiered system through securities intermediaries such as financial institutions or brokerage firms. A Treasury security is maintained in the commercial book-entry system if it is credited by a Federal Reserve Bank to a Participant's Securities Account. The regulations governing the commercial book-entry system are found at subpart B of this part, and are referred to as Treasury/Reserve Automated Debt Entry System (TRADES).

(2) *Legacy Treasury Direct.* The Legacy Treasury Direct system is a non-Internet-based book-entry system maintained by Treasury for purchasing and holding marketable Treasury securities as book-entry products. A Treasury security is maintained in Legacy Treasury Direct if it is credited to a Legacy Treasury Direct account as described in § 357.20 of this part. Treasury securities are held directly by the Department of the Treasury in accounts maintained in the investor's name. A Legacy Treasury Direct account may be accessed through a designated Federal Reserve Bank or the Bureau of the Public Debt. See subpart C of this part for rules pertaining to Legacy Treasury Direct.

(3) *TreasuryDirect.* TreasuryDirect is a book-entry, online system maintained by the Department of the Treasury for purchasing and holding eligible marketable Treasury securities, United States Savings Bonds, and certificates of indebtedness in electronic form as a computer record on the books of Treasury. The regulations governing TreasuryDirect are found at 31 CFR part 363.

* * * * *

■ 15. Amend § 357.2 by revising the definitions of ''Book-entry security'' and ''Original issue,'' in alphabetical order, to read as follows:

§ 357.2 Definitions.

* * * * *

Book-entry security means a Treasury security maintained as a computer record in the commercial book-entry system, Legacy Treasury Direct, or TreasuryDirect.

* * * * *

Original issue means Treasury's offering of a marketable Treasury security to the public and its issuance in book-entry form to be maintained in the commercial book-entry system, Legacy Treasury Direct, or TreasuryDirect.

* * * * *

■ 16. Amend § 357.22 by revising the second sentence in paragraph (a), the fourth sentence in paragraph (a), the first sentence of paragraph (a)(1), and paragraph (a)(3) to read as follows:

§ 357.22 Transfers.

(a) *General.* * * * A security may be transferred among accounts in Legacy Treasury Direct, the commercial book-entry system, and TreasuryDirect. * * * The Department may delay transfer of a newly purchased security from a Legacy Treasury Direct account to an account in commercial book entry or TreasuryDirect for a period not to exceed (30) calendar days from the date of issue.

(1) *Identification of securities to be transferred.* The owner must identify the securities to be transferred, in the manner required by the transaction request. * * *

* * * * *

(3) *When transfer effective.*

(i) *Transfer within Legacy Treasury Direct or to Legacy Treasury Direct from the commercial book-entry system or TreasuryDirect.* A transfer of a security within Legacy Treasury Direct, or to Legacy Treasury Direct from another book-entry system, is effective when an appropriate entry is made in the name of the transferee on the Legacy Treasury Direct records.

(ii) *Transfer from Legacy Treasury Direct to the commercial book-entry system.* A transfer of a security from Legacy Treasury Direct to the commercial book-entry system is effective as provided in Subpart B. If a transfer cannot be completed, and the security is sent back to Legacy Treasury Direct, the Department will redeposit the security in the original account.

(iii) *Transfer from Legacy Treasury Direct to TreasuryDirect.* A transfer of a security from Legacy Treasury Direct to TreasuryDirect is effective as provided in 31 CFR part 363. If the transfer cannot be completed, the Department will redeposit the security in the original account.

* * * * *

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT

■ 17. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*; 31 U.S.C. 3121, *et seq.*

■ 18. Amend part 363 by revising ''TreasuryDirect'' or ''Legacy Treasury Direct'' to read ''TreasuryDirect®'' or ''Legacy Treasury Direct®'' the first time they appear in each section or section heading in the part.

§ 363.3 [Removed and reserved]

■ 19. Remove and reserve § 363.3.

■ 20. Revise § 363.4 to read as follows:

§ 363.4 How is TreasuryDirect different from the Legacy Treasury Direct system and the commercial book-entry system?

(a) *TreasuryDirect.* TreasuryDirect is a book-entry, online system maintained by Treasury for purchasing, holding and conducting permitted transactions in eligible Treasury securities in electronic form as a computer record on the books of Treasury. TreasuryDirect currently provides for the purchase and holding of eligible book-entry savings bonds, certificates of indebtedness, and eligible marketable Treasury securities.

(b) *Legacy Treasury Direct.* The Legacy Treasury Direct system is a non-Internet-based book-entry system maintained by Treasury for purchasing, holding, and conducting permitted transactions in eligible marketable Treasury securities as book-entry products. The terms and conditions for the Legacy Treasury Direct system are found at 31 CFR part 357, subpart C.

(c) *Commercial book-entry system.* The commercial book-entry system is the book-entry system in which Treasury securities are held in a tiered system through securities intermediaries such as financial institutions or brokerage firms. The regulations governing the commercial book-entry system are found at 31 CFR part 357, subpart B, and may be referred to in that part as Treasury/Reserve Automated Debt Entry System (TRADES).

■ 21. Amend § 363.5 by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), adding paragraph (a), and revising the newly redesignated paragraph (c), to read as follows:

§ 363.5 How do I contact Public Debt?

(a) You may use the ''Contact Us'' feature within TreasuryDirect to communicate information to us over a secure Internet connection.

* * * * *

(c) Letters should be addressed to: Bureau of the Public Debt, TreasuryDirect, P.O. Box 5312, Parkersburg, WV 26106–5312.

■ 22. Amend § 363.6 by removing the definition of ''Depository financial institution,'' adding the definitions of ''Commercial book-entry system,'' ''Financial institution,'' ''Legacy Treasury Direct system,'' ''Marketable Treasury security,'' ''Sell Direct,'' and ''Tender'' in alphabetical order and revising the definition of ''Certificate of Indebtedness'' and ''Transfer,'' to read as follows:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Certificate of Indebtedness is a one-day non-interest-bearing security held within your primary or linked account, including a minor account for which you are the custodian, that automatically matures and is rolled over each day until you request that it be redeemed.

Commercial book-entry system refers to the book-entry system in which you hold your Treasury securities in a tiered system through securities intermediaries such as financial institutions or brokerage firms. (See § 363.4.)

* * * * *

Financial institution, or depository financial institution, means an entity described in 12 U.S.C. 461 (b)(1)(A)(i)–(vi).

* * * * *

Legacy Treasury Direct system is a non-Internet-based book-entry system maintained by Treasury since 1986 for purchasing and holding marketable Treasury securities directly with Treasury as book-entry products. (See § 363.4.)

* * * * *

Marketable Treasury security refers to a Treasury bill, note, or bond that is negotiable and transferable, that is, may be bought and sold in the secondary market.

* * * * *

Sell Direct® is a service in which Treasury, through our agent, will sell your marketable Treasury security held in TreasuryDirect or Legacy Treasury Direct on the open market for a fee.

* * * * *

Tender means an offer, or bid, to purchase a marketable Treasury security.

* * * * *

Transfer is a transaction to move a security, or a portion of a security, from one account to another within TreasuryDirect, or to move a marketable Treasury security to or from a TreasuryDirect account and an account in Legacy Treasury Direct or the commercial book-entry system.

* * * * *

■ 23. Amend § 363.10 by revising the heading, paragraph (a)(2), and the last sentence of paragraph (b)(1) to read as follows:

§ 363.10 What is a TreasuryDirect account?

* * * * *

(a) * * *

(2) Gifts of savings bonds that have not yet been delivered;

* * * * *

(b) * * *

(1) * * * You may also buy and deliver gift savings bonds from your custom account.

* * * * *

■ 24. Amend § 363.21 by revising the heading, and paragraphs (a), (b), (c), (d), and (e) to read as follows:

§ 363.21 What transactions can I perform online through my TreasuryDirect account?

* * * * *

(a) You can purchase, transfer, and change the registration of an eligible Treasury security, including a transfer of a marketable security for a Sell Direct transaction;

(b) You can redeem a savings bond;

(c) You can deliver a gift savings bond to the account of the recipient;

(d) You can grant and revoke the right to view an eligible security to a

secondary owner or beneficiary named on the security, if the secondary owner or beneficiary is a TreasuryDirect account owner;

(e) You, as the primary owner, can grant certain transaction rights to the secondary owner, and you can also revoke those rights. The secondary owner can exercise those rights, provided they have not been revoked, if the secondary owner is a TreasuryDirect account owner;

* * * * *

■ 25. Amend § 363.22 by revising paragraph (c) to read as follows:

§ 363.22 Who has the right to conduct online transactions in book-entry securities?

* * * * *

(c) *Primary owner with secondary owner form of registration.* (1) The primary owner can conduct any permitted transaction in a security held in the primary owner's TreasuryDirect account. (See § 363.20(e)).

(2) If the primary owner has given the secondary owner the right to conduct transactions in a security, and has not revoked that right, then the secondary owner can conduct transactions in the security. Transactions that may be conducted by the secondary owner include transferring a marketable security, including a transfer for a Sell Direct transaction, redeeming a savings bond, and changing the destination of interest and redemption payments for marketable securities.

* * * * *

■ 26. Amend § 363.26 by revising paragraph (a) and adding paragraph (c), to read as follows:

§ 363.26 What is a transfer?

(a) A transfer is a transaction to:

(1) Move a Treasury security, or a portion of a Treasury security, from one account to another within TreasuryDirect ;

(2) Move a marketable Treasury security to or from a TreasuryDirect account and an account in Legacy Treasury Direct or the commercial book-entry system.

* * * * *

(c) *Gift delivery is not a transfer.* A transfer does not include delivery of a gift savings bond from the donor to the recipient. This is referred to as a delivery.

■ 27. Amend § 363.27 by:

■ a. Redesignating paragraphs (a) through (f) as paragraphs (b) through (g);

■ b. Adding a new paragraph (a) to read as set forth below; and

■ c. Revising the first sentence of the newly redesignated paragraph (e)(2), and revising the newly redesignated paragraphs (e)(3), (e)(4), (e)(6), and (e)(7), to read as follows:

§ 363.27 What do I need to know about accounts for minors who have not had a legal guardian appointed by a court?

(a) We do not permit a minor to purchase securities.

* * * * *

(e) * * *

(2) The custodian may redeem savings bonds on behalf of the minor through the minor's account. * * *

(3) The custodian may not purchase gift savings bonds from the minor's account.

(4) The custodian may transfer a security to another TreasuryDirect account, provided the account is a linked account bearing the name and taxpayer identification number of the minor. The custodian can transfer a marketable Treasury security to an account in Legacy Treasury Direct or the commercial book-entry system, and may request a Sell Direct transaction.

* * * * *

(6) Gift savings bonds may be delivered to the minor's account.

(7) The custodian may grant rights to view and conduct transactions in the security as may be permitted by § 363.22.

* * * * *

■ 28. Revise §§ 363.36, 363.37, and 363.38 to read as follows:

§ 363.36 What securities can I purchase and hold in my TreasuryDirect account?

You can purchase and hold eligible Treasury securities in your account. Eligible securities are Series EE and Series I savings bonds, certificates of indebtedness, and marketable Treasury securities that are available for purchase through the TreasuryDirect Web site. In addition, you can hold converted savings bonds and eligible marketable Treasury securities that have been transferred from the Legacy Treasury Direct system or the commercial book-entry system.

§ 363.37 How do I purchase and make payment for eligible Treasury securities through my TreasuryDirect account?

(a) *Online purchase.* Purchases of eligible Treasury securities through your TreasuryDirect account must be made online.

(b) *Payment for savings bonds and marketable Treasury securities.* You can pay for eligible savings bonds and marketable Treasury securities by either a debit to your designated account at a United States financial institution using the ACH method, or by using the redemption proceeds of your certificate of indebtedness.

(c) *Payment for certificate of indebtedness.* You can pay for a certificate of indebtedness by a direct deposit from your financial institution or employer to your TreasuryDirect account using the ACH method; by a debit from your designated account at a financial institution using the ACH method, but the amount of the debit is limited to $1000 or less; or by using the proceeds of maturing securities held in your Treasury Direct account.

§ 363.38 What happens if my financial institution returns an ACH debit?

If your designated financial institution returns an ACH debit, we reserve the right to reinitiate the debit at our option. We also reserve the right to reverse the transaction, thereby removing the security from your TreasuryDirect account. If the ACH return occurs after the security has been redeemed, transferred, or has matured and the proceeds paid, we reserve the right to reverse previously processed security transactions. We are not responsible for any fees your financial institution may charge relating to returned ACH debits.

■ 29. Revise § 363.40 to read as follows:

§ 363.40 How are payments of principal and interest made?

(a) *Payment of a savings bond that has reached final maturity.* We will purchase a certificate of indebtedness in your TreasuryDirect account using the proceeds of a matured savings bond.

(b) *Payments of interest and principal (except a savings bond that has reached final maturity).* (1) We provide two methods of receiving payments of principal and interest:

(i) Payment to your account at a financial institution by the ACH method, or

(ii) Payment to your TreasuryDirect account to purchase a certificate of indebtedness.

(2) You may select different payment destinations for principal and interest for a marketable Treasury security. You may change your payment destination at any time, unless the security is in the closed book period. (See § 363.210.)

(3) If we are unable to deliver a payment, we will use the payment to purchase a certificate of indebtedness in your TreasuryDirect account.

■ 30. Amend § 363.44 by revising paragraph (a)(1) to read as follows:

§ 363.44 What happens when a TreasuryDirect account owner dies and the estate is entitled to securities held in the account?

(a) *Estate is being administered.* (1) For an estate that is being administered, the legal representative of the estate may request payment of securities, if the securities are eligible for payment, to the estate or to the persons entitled, or may:

(i) Request transfer of securities to the TreasuryDirect account of the persons entitled, if the securities are eligible for transfer;

(ii) Request transfer of marketable Treasury securities to the commercial book-entry system; or

(iii) Request a Sell Direct transaction.

* * * * *

§§ 363.80–363.81 [Removed and reserved]

■ 31. Remove and reserve § 363.80 and § 363.81.

§ 363.82 [Redesignated]

■ 32. Redesignate § 363.82 as § 363.101.

§ 363.82 [Added and reserved]

■ 32a. Add and reserve new §363.82.

■ 33. Add § 363.100 to read as follows:

§ 363.100 What are the rules for purchasing and delivering gift savings bonds to minors?

(a) A TreasuryDirect account owner can purchase a savings bond as a gift with a minor as the recipient.

(b) An account owner can deliver a bond purchased as a gift to a minor. The account owner must deliver the security to the minor's linked account. Once delivered, the bond will be under the control of the custodian of the minor's account. (See § 363.27.)

■ 34. Revise the newly redesignated § 363.101 to read as follows:

§ 363.101 Can an account owner transfer a book-entry savings bond to a minor?

An account owner can transfer a book-entry savings bond held in TreasuryDirect to a minor as a gift or pursuant to one of the specified exceptions in § 363.55(a).

■ 35. Amend § 363.138 by revising paragraph (c) to read as follows:

§ 363.138 How do I purchase a certificate of indebtedness?

* * * * *

(c) through the Buy Direct® function of your TreasuryDirect account, in which you direct us to debit funds from your account at a financial institution to purchase a certificate of indebtedness. This method is limited to an amount no greater than $1000 per transaction. When you use the Buy Direct function to debit funds to purchase all or a portion of a certificate of indebtedness, you will not be permitted to schedule a redemption for cash from your certificate of indebtedness within five business days after the date of the debit entry; or

* * * * *

■ 36. Revise § 363.142 to read as follows:

§ 363.142 Can I redeem my certificate of indebtedness for cash?

You can redeem part or all of the value of your certificate of indebtedness at any time, with one exception: if you purchased all or a portion of your certificate of indebtedness through a debit using the ACH method, you may not schedule a redemption from your certificate of indebtedness within five business days after the date of the debit entry.

■ 37. Redesignate Subpart F as Subpart H.

■ 38. Redesignate § 363.200 through § 363.202 as § 363.250 through § 363.252.

■ 39. Add a new subpart F to read as follows:

Subpart F—Marketable Treasury Securities

Sec.

Subpart F—Marketable Treasury Securities

§ 363.200 What Treasury securities does this subpart govern?

This subpart provides the rules for holding marketable Treasury bills, notes, and bonds in book-entry form in TreasuryDirect.

§ 363.201 What other regulations govern book-entry marketable book-entry Treasury bills, notes, and bonds?

(a) 31 CFR part 356 governs the sale and issue of marketable book-entry Treasury securities on or after March 1, 1993, whether held in TreasuryDirect, Legacy Treasury Direct, or the commercial book-entry system.

(b) 31 CFR part 357 governs holding marketable book-entry Treasury bills, notes, and bonds in the Legacy Treasury Direct system and in the commercial book-entry system.

§ 363.202 What marketable Treasury securities may I purchase and hold through my TreasuryDirect account?

(a) *Purchase.* You may purchase any marketable Treasury security that is available for purchase through the TreasuryDirect Web site.

(b) *Hold.* You may transfer into the system and maintain in your TreasuryDirect account any eligible marketable book-entry Treasury bill, note, or bond.

§ 363.203 After I purchase my marketable Treasury security in TreasuryDirect, is there a period of time during which I may not transfer the security?

Once you purchase a marketable Treasury security in TreasuryDirect, you may not transfer that security for a period of 45 calendar days after the issue date of the security, or the term of the security, whichever is less.

§ 363.204 What registrations are available for my marketable Treasury securities held in TreasuryDirect?

You may register your marketable Treasury securities in any form of registration permitted by § 363.20 of this part.

§ 363.205 How do I reinvest the proceeds of a maturing security held in TreasuryDirect?

You can reinvest the proceeds of a maturing security held in TreasuryDirect by first directing that the proceeds from the maturing security be used to purchase a certificate of indebtedness in your account, and then using the redemption proceeds of your certificate of indebtedness to purchase another security. Any purchase using the proceeds from a certificate of indebtedness is considered a reinvestment.

§ 363.206 How can I transfer my marketable Treasury security into my TreasuryDirect account from another book-entry system?

(a) *Legacy Treasury Direct to TreasuryDirect.* 31 CFR part 357, subpart C, governs the transfer of a marketable book-entry Treasury security from your Legacy Treasury Direct account into TreasuryDirect.

(b) *Commercial book-entry system to TreasuryDirect.* You may transfer your marketable Treasury security from the commercial book-entry system by contacting the financial institution or broker that handles your commercial book-entry account.

(c) *Form of registration upon transfer to TreasuryDirect.* When your security is transferred into your TreasuryDirect account, it will be transferred into your account in your name in the sole owner form of registration, regardless of the form of registration prior to the transfer. After the transfer is completed, you can change the registration to any form of registration permitted by § 363.20.

(d) *Amounts transferred.* You can only transfer in increments of $1000.

§ 363.207 Can I transfer my marketable Treasury security from my TreasuryDirect account to another TreasuryDirect account?

After the initial 45-calendar day holding period for your marketable Treasury security (see § 363.203) you can transfer your security to another TreasuryDirect account in increments of $1000.

§ 363.208 Can I transfer my marketable Treasury security from my TreasuryDirect account to an account in another book-entry system?

After the initial 45-calendar day holding period for your marketable Treasury security (see § 363.203) you can transfer your security to an account in Legacy Treasury Direct or to an account in the commercial book-entry system in increments of $1000.

§ 363.209 How can I direct that my marketable Treasury security be sold on the open market (Sell Direct®)?

(a) *Sell Direct.* We offer a service, referred to as Sell Direct, in which we will sell your marketable Treasury security for you on the open market at your request. We will transfer your security to an account in the commercial book-entry system maintained by our agent, and will sell the security on your behalf. By authorizing the transfer and sale of the security, you agree to accept the price received by our agent. If our agent is unable to obtain at least one price quote for the security, the security will be returned to your TreasuryDirect account.

(b) *Fee.* We charge a fee for each security sold on your behalf. By authorizing the sale of the security, you authorize our agent to deduct the fee from the proceeds of the sale. If our agent is unable to complete the sale, no fee will be charged. The amount of the fee is published in the **Federal Register**.

(c) *Definitions.* The following definitions will help you understand this section and the confirmation that you will receive after the sale is completed.

(1) The *trade date* is the date that your security is sold.

(2) A *security*, for the purpose of this section, is any amount represented by a separate CUSIP number (see definition of CUSIP in 31 CFR part 356).

(3) The *settlement date* is the date that the proceeds of the sale are released to the financial institution that you designated to receive the proceeds.

(4) The *yield to maturity*, or *yield*, is the annualized rate of return to maturity on a fixed principal security expressed as a percentage. For an inflation-indexed security, yield means real yield, as defined in 31 CFR part 356.

(d) On the settlement date, our agent will release the settlement proceeds, less the fee, to the account at the financial institution that you designated.

(e) When the transaction is complete, our agent will send you a confirmation. The confirmation will include the price, trade date, settlement date, settlement amount or net amount, transaction fee, and yield to maturity.

(f) We are not liable for changes in market conditions affecting the price received for the security, or for any loss that you may incur as a result of the sale or the inability of our agent to complete the sale.

(g) We reserve the right to terminate the Sell Direct® service at any time.

§ 363.210 Is there any period of time during which I will be unable to process certain transactions regarding my security?

A closed book period will be in effect for four business days prior to the date a marketable security interest or redemption payment is made. This means that certain transactions made during the closed book period will be delayed until after the closed book period is completed and the payment is made. You will be unable to transfer the security, change the payment destination, change the registration of the security, or use Treasury's Sell Direct® service during this closed book period.

§§ 363.211–363.249 [Added and reserved]

■ 40. Add and reserve §§363.211 through 363.249 in subpart F.

Subpart G—[Added and reserved]

■ 41. Add and reserve Subpart G.

Dated: September 26, 2005.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 05–19552 Filed 9–27–05; 12:41 pm]

BILLING CODE 4810–39–P

Federal Register

Friday,
September 30, 2005

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 1, 2, 3, et al.
Federal Acquisition Regulations; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–06; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–06. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–06 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far*.

Item	Subject	FAR case	Analyst
I	Information Technology Security (Interim)	2004–018	Davis.
II	Improvements in Contracting for Architect-EngineerServices	2004–001	Davis.
III	Title 40 of United States Code Reference Corrections	2005–010	Zaffos.
IV	Implementation of the Anti-Lobbying Statute	1989–093	Woodson.
V	Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard	2004–037	Jackson.
VI	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program.	2004–036	Marshall.
VII	Powers of Attorney for Bid Bonds	2003–029	Davis.
VIII	Expiration of the Price Evaluation Adjustment(Interim)	2005–002	Cundiff.
IX	Accounting for Unallowable Costs	2004–006	Olson.
X	Reimbursement of Relocation Costs on a Lump-Sum Basis	2003–002	Olson.
XI	Training and Education Cost Principle	2001–021	Olson.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–06 amends the FAR as specified below:

Item I—Information Technology Security (FAR Case 2004–018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001)

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005–010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

Item IV—Implementation of the Anti-Lobbying Statute (FAR Case 1989–093)

This final rule converts the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990 to a final rule with minor changes amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to Title 31 of the United States Code, entitled ''Limitations on the use of funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of $100,000 or a Federal commitment to insure or guarantee a loan in excess of $150,000 must disclose lobbying with other than appropriated funds. The rule requires contracting officers, in accordance with FAR 3.808, to insert in all solicitations and contracts expected to exceed $100,000 the provision at FAR 52.203–11, ''Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction,'' and the clause at FAR 52.203–12, ''Limitations on Payments to Influence Certain Federal Transactions.''

Item V—Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard (FAR Case 2004–037)

This final rule converts the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule

amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50 million to $75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B). In addition, corresponding changes have been made to FAR 13.501. The rule will reduce administrative burden for ordering activities.

Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036)

This final rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.

Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003–029)

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to resolve the controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening.

Item VIII—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)

This interim rule cancels the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change is required because the statutory authority for the adjustments has expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item IX—Accounting for Unallowable Costs (FAR Case 2004–006)

This final rule amends FAR 31.201–6, Accounting for unallowable costs, by adding paragraphs (c)(2) through (c)(5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31.109, Advance agreements, by adding ''statistical sampling methods'' as an example of the type of item for which an advance agreement may be appropriate. The case was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with FAR Part 31.

Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis (FAR Case 2003–002)

This final rule amends FAR 31.205–35 to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

Item XI—Training and Education Cost Principle (FAR Case 2001–021)

This final rule amends the FAR by revising the contract cost principle at FAR 31.205–44, Training and education costs. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs.

Dated: September 22, 2005.

Julia B. Wise,

Director,Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-06 is effective October 31, 2005, except for Items I, II, III, IV, V, VI, VII, and VIII, which are effective September 30, 2005.

Dated: September 15, 2005.

Vincent J. Feck, Lt Col, USAF

Acting Director, Defense Procurement and Acquisition Policy.

Dated: September 22, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: September 14, 2005.

Anne Guenther,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 05–19467 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 11, and 39

[FAC 2005–06; FAR Case 2004–018; Item I]

RIN 9000–AK29

Federal Acquisition Regulation; Information Technology Security

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition

Regulation (FAR) to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

DATES: *Effective Date*: September 30, 2005.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 29, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–06, FAR case 2004–018, by any of the following methods:

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

• Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: farcase.2004–018@gsa.gov. Include FAC 2005–06, FAR case 2004–018 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW; Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–06, FAR case 2004–018, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. The TTY Federal Relay Number for further information is1–800–877–8973. Please cite FAC 2005–06, FAR case 2004–018.

SUPPLEMENTARY INFORMATION:

A. Background

American society relies on the Federal Government for essential information and services provided through interconnected computer systems. Both Government and industry face increasing security threats to essential services and must work in close partnership to address those risks. Increasingly, contractors are supplying, operating, and accessing critical IT systems, performing critical functions throughout the life of IT systems. At the same time, it is apparent that information technology and the IT marketplace have become truly global. The security risks are shared globally as well.

Unauthorized disclosure, corruption, theft, or denial of IT resources have the potential to disrupt agency operations and could have financial, legal, human safety, personal privacy, and public confidence impacts. The Federal community has not focused on unclassified activities with regard to information technology resources involved in the acquisition and use of information on behalf of the Government. In particular, there is need to focus on the role of contractors in security as more and more Federal agencies outsource various information technology functions. Until now, regulations have generally been silent regarding security requirements for contractors who provide goods and services with IT security implications.

This rule amends FAR parts 1, 2, 7, 11, and 39 to implement the information technology security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)). The rule recognizes security as an important part of all phases of the IT acquisition life cycle. The rule focuses much needed attention on the importance of system and data security by contracting officials and other members of the acquisition team.

The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

The Councils recognize that IT security standards will continue to evolve and that agency-specific policy and implementation will evolve differently across the spectrum of Federal agencies, depending on their missions. Agencies will customize IT security policies and implementations to meet mission needs as they adapt to a dynamic IT security environment.

The rule is proposing to amend the FAR by—

• Adding the stipulation that when buying goods and services contracting officers shall seek advice from specialists in information security;

• Adding a definition for the term ''Information Security'';

• Incorporating security requirements in acquisition planning and when describing agency needs;

• Requiring adherence to Federal Information Processing Standards; and

• Revising the policy in FAR 39.101 to require including the appropriate agency security policy and requirements in information technology acquisitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Although the FAR rule will itself have no direct impact on small business concerns, the subsequent supplemental policy-making at the agency level may have some impact on these entities. Since FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements, the real implementation of this will occur at the agency level. The impact on small entities will, therefore, be variable depending on the agency implementation. The bulk of the policy requirements for information security are expected to be issued as either changes to agency supplements to the FAR or as internal IT policies promulgated by the agency Chief Information Officer (CIO), or equivalent, to assure compliance with agency security policies. These agency supplements and IT policies may affect small business concerns in terms of their ability to compete and win Federal IT contracts. The extent of the effect and impact on small business concerns is unknown and will vary from agency to agency due to the wide variances among agency missions and functions.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

Initial Regulatory Flexibility Analysis FAC 2005–06, FAR Case 2004–018, Information Technology Security

This Initial Regulatory Flexibility Analysis has been prepared consistent with 5 U.S.C. 603.

1. Description of the reasons why the action is being taken.

This interim rule amends the Federal Acquisition Regulation to implement the information technology (IT) security provisions of the Federal Information Security Management Act of 2002 (FISMA), (Title III of the E-Government Act of 2002 (E-Gov Act)). FISMA requires agencies to identify and provide information security protections

commensurate with security risks to Federal information collected or maintained for the agency and information systems used or operated on behalf of an agency by a contractor.

2. Succinct statement of the objectives of, and legal basis for, the rule.

The rule implements the IT security provisions of the FISMA. Section 301 of FISMA (44 U.S.C. 3544) requires that contractors be held accountable to the same security standards as Government employees when collecting or maintaining information or using or operating information systems on behalf of an agency. Security is to be considered during all phases of the acquisition life cycle. FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements. Agencies are further required, through the Chief Information Officer (CIO) or equivalent, to assure compliance with agency security policies. The law requires that contractors and Federal employees be subjected to the same requirements in accessing Federal IT systems and data.

3. Description of and, where feasible, estimate of the number of small entities to which the rule will apply.

The FAR rule will itself have no direct impact on small business concerns. As stated in #2 above, FISMA requires that agencies establish IT security policies that are commensurate with agency risk and potential for harm and that meet certain minimum requirements. The real implementation of this will occur at the agency level. The impact on small entities will, therefore, be variable depending on the agency implementation. The bulk of the policy requirements for information security are expected to be issued as either changes to agency supplements to the FAR or as internal IT policies promulgated by the agency Chief Information Officer (CIO), or equivalent, to assure compliance with agency security policies. These agency supplements and IT policies may affect small business concerns in terms of their ability to compete and win Federal IT contracts. The extent of the effect and impact on small business concerns is unknown and will vary from agency to agency due to the wide variances among agency missions and functions.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objectives of the applicable statutes.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 2, 7, 11, and 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–06, FAR case 2004–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the requirements of the Federal Information Security Management Act (FISMA) of 2002, which went into effect December 17, 2002 and associated implementing guidance from the Office of Management and Budget (OMB) and National Institute of Standards and Technology, particularly FISMA's requirement for agencies to ensure contractor compliance with all current IT security laws and policies. The FAR does not currently provide adequate security for, or sufficient oversight of, the operations of Government contractors (including service providers), and this interim rule is necessary to ensure the Federal Government is not exposed to inappropriate and unknown risk.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 7, 11, and 39

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 11, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 11, and 39 continues to read as follows:

Authority: : 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.602–2 [Amended]

■ 2. Amend section 1.602–2 by removing from paragraph (c) ''engineering,'' and adding ''engineering, information security,'' in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definitions ''Information security'' and ''Sensitive But Unclassified (SBU) information'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Information security means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to, and use of, information.

* * * * *

Sensitive But Unclassified (SBU) information means unclassified information, which, if lost, misused, accessed or modified in an

unauthorized way, could adversely affect the national interest, the conduct of Federal programs, or the privacy of individuals. Examples include information which if modified, destroyed or disclosed in an unauthorized manner could cause: loss of life; loss of property or funds by unlawful means; violation of personal privacy or civil rights; gaining of an unfair commercial advantage; loss of advanced technology, useful to competitor; or disclosure of proprietary information entrusted to the Government.

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by adding paragraph (u) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(u) Ensuring that agency planners on information technology acquisitions comply with the information technology security requirements in the Federal Information Security Management Act (44 U.S.C. 3544), OMB's implementing policies including Appendix III of OMB Circular A–130, and guidance and standards from the Department of Commerce's National Institute of Standards and Technology.

■ 5. Amend section 7.105 by adding a sentence to the end of paragraph (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(17) * * * For Information Technology acquisitions, discuss how agency information security requirements will be met.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 6. Revise section 11.102 to read as follows:

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM–0001; for DoD components, DoD 4120.24–M, Defense Standardization Program Policies and Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.24–M may be obtained from DoD (see address in 11.201(d)(2)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in 11.201(d)(3)).

■ 7. Amend section 11.201 by adding paragraph (d)(3) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d) * * *

(3) The FIPS PUBS may be obtained from *http://www.itl.nist.gov/fipspubs/*, or purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Telephone (202) 512–1800, Facsimile (202) 512–2250; or National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Telephone (703) 605–6000, Facsimile (703) 605–6900, Email: *orders@ntis.gov*.

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 8. Amend section 39.101 by adding paragraph (d) to read as follows:

39.101 Policy.

* * * * *

(d) In acquiring information technology, agencies shall include the appropriate information technology security policies and requirements.

[FR Doc. 05–19468 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 8, 16, and 36

[FAC 2005–06; FAR Case 2004–001; Item II]

RIN 9000–AK15

Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136). This final rule emphasizes the requirement to place orders for architect-engineer services consistent with the FAR and reiterates that such orders shall not be placed under General Services Administration (GSA) multiple award schedule (MAS) contracts and Governmentwide task and delivery order contracts unless the contracts were awarded using the procedures as stated in the FAR.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–06, FAR case 2004–001.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule constitutes the implementation in the FAR of Section 1427 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136) to ensure that the requirements of the Brooks Architect-Engineers Act (40 U.S.C. 1102 *et seq.*) are not circumvented through the placement of orders under GSA MAS contracts and Governmentwide task and delivery order contracts that were not awarded using FAR Subpart 36.6 procedures. An order cannot be issued consistent with FAR Subpart 36.6, as currently required by FAR 16.500(d), unless the basic underlying contract was awarded using the Brooks Architect-Engineers Act procedures. This final rule amends FAR parts 2, 8, 16, and 36 to ensure appropriate procedures are followed when ordering architect-engineer services. The interim rule was published in the **Federal Register** at 70 FR 11737, March 9, 2005. The Councils received comments in response to the interim rule from seven (7) respondents.

Summary of the Public Comments

The comments were organized into three groups as follows:

1. *Clarification on the Brooks Act Citation (40 U.S.C. 1102).*

Comment: Two commenters indicated that they were unable to find any relation of 40 U.S.C. 1102 with Architect-Engineer Services and requested clarification.

Response: The Councils clarify that the Brooks Act was recently re-codified by Congress and is now identified under 40 U.S.C. 1101 *et seq.* and the definition of architect-engineer services is defined under 40 U.S.C. 1102.

2. *Support interim rule but it does not go far enough. Recommend changes in the definition.*

Comment: One commenter requested that in each place where the term ''architect-engineer'' is used in the rule, it be replaced with the term ''architectural and engineering (including surveying and mapping) services.'' Another commenter requested that all mapping and surveying be subjected to qualification based selection in conformance with the Brooks Act.

Response: The Councils considered these recommendations to be beyond the scope of the rule. In addition, the Councils have already addressed the issue of the procurement of mapping services in FAR case 2004–023, published in the **Federal Register** at 70 FR 20329, April 19, 2005.

3. *Address how GSA plans to prevent violation when Agencies use the GSA Multiple Award Schedule (MAS) program.*

Comment: Four commenters indicated that they have concerns with the proper use of the MAS program and asked that GSA indicate how it plans to eliminate the violations.

Response: GSA has indicated to the Councils that it supports the use of the qualifications based selection (QBS) process for the procurement of A/E services for public projects as mandated by the Brooks Architect-Engineer Act of 1972 (Public Law 92–582, 40 U.S.C. 1102 *et seq.*), and it does not condone any violation of the Brooks Act. To ensure that the ordering agencies are fully aware of the statutory requirement, GSA has indicated that it has taken various steps to state that the GSA MAS Program may *not* be used to acquire services that are subject to the procedures of FAR Subpart 36.6. These steps include adding information to the online and classroom training, refining the scope of MAS contracts, adding a notice to GSA portal and MAS brochures, adding new FAQ's on the website, and conducting a customer compliance survey. GSA also plans on conducting reviews of task orders for scope compliance and A/E services will be part of the reviews.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this rule only clarifies an already existing requirement that architectural and engineering services be procured using the procedures at FAR Subpart 36.6.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 2, 8, 16, and 36

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 2, 8, 16, and 36, which was published at 70 FR 11737, March 9, 2005, is adopted as a final rule without change.

[FR Doc. 05–19469 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52

[FAC 2005–06; FAR Case 2005–010; Item III]

RIN 9000–AK27

Federal Acquisition Regulation; Title 40 of United States Code Reference Corrections

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect the most recent codification of Title 40 of the United States Code.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–06, FAR case 2005–010.

SUPPLEMENTARY INFORMATION:

A. Background

Congress recently codified Title 40 of the United States Code. As a result, all sections of Title 40 were renumbered. This rule corrects the references to Title 40 in the FAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–06, FAR case 2005–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 7, 8, 12, 13, 22, 28, 36, 37, 39, 41, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by revising paragraph (1) and the first sentence of paragraph (2) of the definition ''Governmentwide acquisition contract (GWAC)'', and the second sentence of the definition ''Multi-agency contract (MAC)'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Governmentwide acquisition contract (GWAC) * * *

(1) By an executive agent designated by the Office of Management and Budget pursuant to 40 U.S.C. 11302(e); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section 40 U.S.C. 759, repealed by Pub. L. 104–106. * * *

* * * * *

Multi-agency contract (MAC) * * * Multi-agency contracts include contracts for information technology established pursuant to 40 U.S.C. 11314(a)(2).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.702 by revising the second sentence in paragraph (b) to read as follows:

4.702 Applicability.

* * * * *

(b) * * * Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., or 40 U.S.C. 101, *et seq.*

PART 6—COMPETITION REQUIREMENTS

6.102 [Amended]

■ 4. Amend section 6.102 in paragraph (d)(1) by removing ''Pub. L. 92–582 (40 U.S.C. 541 *et seq.*)'' and adding ''40 U.S.C. 1102 *et seq.*'' in its place.

PART 7—ACQUISITION PLANNING

7.103 [Amended]

■ 5. Amend section 7.103 in paragraph (t) by removing ''40 U.S.C. 1422'' and adding ''40 U.S.C. 11312'' in its place.

7.105 [Amended]

■ 6. Amend section 7.105 in paragraph (b)(4)(ii)(A) by removing ''40 U.S.C. 1422'' and adding ''40 U.S.C. 11312'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 [Amended]

■ 7. Amend section 8.001 by removing ''40 U.S.C. 1422'' and adding ''40 U.S.C. 11312'' in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

■ 8. Amend section 12.503 in paragraph (b)(1) by removing ''40 U.S.C. 327'' and adding ''40 U.S.C. 3701'' in its place.

12.504 [Amended]

■ 9. Amend section 12.504 in paragraph (b) by removing ''40 U.S.C. 327, *et seq.*,'' and adding ''40 U.S.C. 3701 *et seq.*,'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.005 [Amended]

■ 10. Amend section 13.005 by—

a. Removing from paragraph (a)(2) ''40 U.S.C. 270a'' and adding ''40 U.S.C. 3131'' in its place; and

b. Removing from paragraph (a)(3) ''40 U.S.C. 327–333'' and adding ''40 U.S.C. 3701 *et seq.*'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.300 [Amended]

■ 11. Amend section 22.300 by removing ''(40 U.S.C. 327–333)'' and adding ''(40 U.S.C. 3701 *et seq.*)'' in its place.

22.304 [Amended]

■ 12. Amend section 22.304 in paragraph (a) by removing ''40 U.S.C. 331'' and adding ''40 U.S.C. 3706'' in its place.

22.403–1 [Amended]

■ 13. Amend section 22.403–1 by removing ''(40 U.S.C. 276a–276a–7)'' and adding ''(40 U.S.C. 3141 *et seq.*)'' in its place.

22.403—2 [Amended]

■ 14. Amend section 22.403–2 by removing from the first sentence ''40 U.S.C. 276c'' and adding ''40 U.S.C. 3145'' in its place.

22.403—3 [Amended]

■ 15. Amend section 22.403–3 by removing ''(40 U.S.C. 327–333)'' and adding ''(40 U.S.C. 3701 *et seq.*)'' in its place.

PART 28—BONDS AND INSURANCE

28.102—1 [Amended]

■ 16. Amend section 28.102–1 by—

a. Removing from the introductory text of paragraph (a) ''(40 U.S.C. 270a–270f)'' and adding ''(40 U.S.C. 3131 *et seq.*)'' in its place; and

b. Removing from the introductory text of paragraph (b)(1) ''Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355),'' and adding ''40 U.S.C. 3132,'' in its place.

28.106—6 [Amended]

■ 17. Amend section 28.106–6 at the end of paragraph (c) by removing ''(see 40 U.S.C. 270(c))'' and adding ''(see 40 U.S.C. 3133)'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.104 [Amended]

■ 18. Amend section 36.104 by removing from the first sentence ''(40 U.S.C. 541, *et seq.*)'' and adding ''(40 U.S.C. 1101 *et seq.*)'' in its place.

■ 19. Amend section 36.601–1 by revising the parenthetical sentence at the end of the paragraph to read as follows:

36.601–1 Public announcement.

* * * (See 40 U.S.C. 1101 *et seq.*

PART 37—SERVICE CONTRACTING

37.102 [Amended]

■ 20. Amend section 37.102 in paragraph (a)(1)(i) by removing ''40 U.S.C. 541–544'' and adding ''40 U.S.C. 1101 *et seq.*'' in its place.

37.202 [Amended]

■ 21. Amend section 37.202 in paragraph (b) by removing ''(Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541).'' and adding ''(40 U.S.C. 1102).'' in its place.

37.301 [Amended]

■ 22. Amend section 37.301 in the first sentence by removing ''(40 U.S.C. 276a–276a–7)'' and adding ''(40 U.S.C. 3141 *et seq.*)'' in its place.

37.302 [Amended]

■ 23. Amend section 37.302 in the introductory text by removing ''(40 U.S.C. 270a–270f)'' and adding ''(40 U.S.C. 3131 *et seq.*)'' in its place.

PART 39—ACQUISTION OF INFORMATION TECHNOLOGY

39.001 [Amended]

■ 24. Amend section 39.001 in the second sentence by removing ''40 U.S.C. 1412'' and adding ''40 U.S.C. 11302'' in its place.

PART 41—ACQUISTION OF UTILITY SERVICES

41.103 [Amended]

■ 25. Amend section 41.103 by—

a. Removing from paragraph (a)(1) in the first sentence ''section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481),'' and from the third sentence ''section 201 of the Act'' and adding ''40 U.S.C. 501'' in both places; and

b. Removing from paragraph (a)(2) ''40 U.S.C. 474(d)(3)'' and adding ''40 U.S.C. 113(e)(3)'' in its place.

PART 47—TRANSPORTATION

47.102 [Amended]

■ 26. Amend section 47.102 in paragraph (a)(2) by removing ''(40 U.S.C. 726)'' and adding ''(40 U.S.C. 17307)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–4 [Amended]

■ 27. Amend section 52.212–4 by—

a. Revising the date of the clause to read ''(SEP 2005)''; and

b. Removing from paragraph (r) of the clause ''40 U.S.C. 327'' and adding ''40 U.S.C. 3701'' in its place.

52.228–15 [Amended]

■ 28. Amend section 52.228–15 by—

a. Revising the date of the clause to read ''(SEP 2005)''; and

b. Removing from the heading of paragraph (e) of the clause ''(40 U.S.C. 270b(c)''; and adding ''(40 U.S.C. 3133(c))'' in its place.

52.232–27 [Amended]

■ 29. Amend section 52.232–27 by—

a. Revising the date of the clause to read ''(SEP 2005)''; and

b. Removing from the introductory text of paragraph (f)(1) of the clause ''section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act),'' and adding ''the Miller Act (40 U.S.C. 3133),'' in its place.

[FR Doc. 05–19470 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 2005–06; FAR Case 1989–093; Item IV]

RIN 9000–AD76

Federal Acquisition Regulation; Implementation of the Anti-Lobbying Statute

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) have agreed to convert the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990, to a final rule with several minor changes. The interim rule amended the Federal Acquisition Regulation (FAR) to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement in excess of $100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of $150,000 must disclose lobbying with other than appropriated funds.

DATES: *Effective Date*: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite FAC 2005–06, FAR case 1989–093.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 55 FR 3190, January 30, 1990. The interim rule amended the Federal Acquisition Regulation to implement Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.'' Section 319 prohibits the recipients of Federal contracts, grants, loans and cooperative agreements from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan or cooperative agreement. It also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements, which OMB published on December 20, 1989 (54 FR 52306). After the interim FAR rule was published in the **Federal Register** at 55 FR 3190, January 30, 1990, OMB published a clarification notice to their earlier guidance on June 15, 1990 (55 FR 24540).

After consideration of the public comments that were received, DoD, GSA, and NASA have agreed to convert the interim rule to a final rule with minor changes as discussed in Section B.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Public Comments

Ninety-four respondents submitted comments. Twenty of the respondents agreed or disagreed with the interim rule without offering suggested changes. The remaining respondents recommended revisions to clarify definitions and revise terminology; clarify or add to the list of exceptions to

the rule; clarify the cost principles; revise the civil penalty coverage; and revise the OMB guidance (outside the scope of the case). DoD, GSA, and NASA considered all comments and concluded that the interim rule should be converted to final with the minor changes described below. For the other recommended revisions in the public comments, DoD, GSA, and NASA have not experienced the issues during the rule's 15–year effective period that the recommended clarifications and revisions were intended to address. However, in taking the administrative action of converting the interim rule to final, DoD, GSA, and NASA recognize the need for additional analysis to determine if further FAR changes are required on the subject of Lobbying restrictions based on activities in this area subsequent to publication of the interim rule. DoD, GSA, and NASA believe that this end is best served by converting to final the 1990 interim rule to provide a stable regulatory baseline against which the new analysis will be conducted. Accordingly, the following changes are made to the interim rule:

1. FAR 3.802(c)(2)(v) is redesignated as FAR 3.802(d), and paragraph (b)(3)(ii)(E) of FAR clause 52.203–12 is redesignated as paragraph (b)(4) of the clause. These paragraphs specify when the reporting requirements of FAR 3.803 do not apply and were incorrectly numbered within the FAR section and clause.

2. In accordance with the OMB clarification of June 15, 1990, paragraph (b)(1) of FAR clause 52.203–11 is revised to indicate that the certification requirement applies only to the award of the instant contract and not ''any'' contract, grant, loan, or cooperative agreement (and any extensions, continuations, renewals, amendments or modifications thereof).

3. Paragraphs (b)(3)(i)(E) and (b)(3)(ii)(D) of FAR clause 52.203–12 are revised to clarify the activities that are permitted under the clause. The interim rule language did not correctly cite all the applicable cross references and was unintentionally restrictive and contradictory.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule finalizes the interim rule with minor corrections in order to implement 31 U.S.C. 1352 entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' also known as the Byrd Amendment. Section 1352 prohibits recipients of Federal contracts from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with that contract, and requires a bidder or offeror for a Federal contract to disclose certain lobbying activities. Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements. OMB published guidance on December 20, 1989 (54 FR 52306), and a clarification notice on June 15, 1990 (55 FR 24540). This final rule implements the requirements of 31 U.S.C. 1352 and the OMB guidance.

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The certification requirements of the final rule will apply to all small entities which seek contracts over $100,000 with the Federal Government. The Federal Government awards approximately 90,000 contracts per year to approximately 18,000 small entities. The disclosure requirements of the rule will only apply to small entities on whose behalf a registered lobbyist has made lobbying contacts with respect to a particular Federal contract. Based on OMB Control No. 0348–0046, Disclosure of Lobbying Activities for SF LLL, which is the standard disclosure form for lobbying paid for with non-Federal funds as required by the Byrd Amendment, 300 responses were received annually from states, local governments, non-profit organizations, individuals, and businesses. The number of such small entities is estimated to be near zero, based on the small number of lobbyists reported to have registered under the Byrd Amendment and the improbability that such lobbyist represent small entities.

To the extent that the statute required that OMB issue guidance regarding compliance with the Byrd Amendment, the reporting and recordkeeping requirements implemented in this rule are considered requirements of the OMB guidance. In this light, there are not additional reporting, recordkeeping, or other compliance requirements imposed by this final rule.

Some alternatives were suggested in public comments on this rule which, the commenters thought would mitigate the economic impact of the rule on small entities. These alternatives are: To exempt procurements of commercial items from the reporting requirements of the rule; to exempt subcontractors from the reporting requirements of the rule; or to permit use of appropriated funds for lobbying contacts by bona fide agents and marketing representatives of an entity. These three alternatives were rejected as inconsistent with the statute. Thus, the final rule, as written, minimizes the economic impact on small entities consistent with the stated objectives of applicable statutes and OMB guidance.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0348–0046. The requirements of this Act were addressed by the Office of Management and Budget (OMB) in the development of its interim final guidance, published in the **Federal Register** on December 20, 1989 (54 FR 52306), implementing Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.''

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director,Contract Policy Division.

Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 3 and 52, which was published at 55 FR 3190, January 30, 1990 (as amended by other final FAR rules subsequent to its publication), as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.802 [Amended]

■ 2. Amend section 3.802 by redesignating paragraph (c)(2)(v) as paragraph (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.203–11 by revising the date of the clause and paragraph (b)(1) of the clause to read as follows:

52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

* * * * *

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

* * * * *

(b) * * *

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

* * * * *

■ 4. Amend section 52.203–12 by revising the date of the clause and paragraphs (b)(3)(i)(E) and (b)(3)(ii)(D) of the clause, and redesignating paragraph (b)(3)(ii)(E) as paragraph (b)(4). The revised text reads as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

* * * * *

(b) * * *

(3) * * *

(i) * * *

(E) Only those agency and legislative liaison activities expressly authorized by paragraph (b)(3)(i) of this clause are permitted under this clause.

(ii) * * *

(D) Only those professional and technical services expressly authorized by paragraph (b)(3)(ii) of this clause are permitted under this clause.

* * * * *

[FR Doc. 05–19471 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 13

[FAC 2005–06; FAR Case 2004–037; Item V]

RIN 9000–AK12

Federal Acquisition Regulation; Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the Federal Acquisition Regulation (FAR) to increase the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard. The FAR revision implemented Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 which amended 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 both places it appears and inserting $75,000,000. In addition, corresponding language in the FAR is also changed to reflect these higher thresholds for DoD, NASA, and the Coast Guard.

DATES: Effective Date: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–06, FAR case 2004–037.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implemented Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amended 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 and inserting $75,000,000.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 11739, March 9, 2005, with a request for comments by May 9, 2005. No comments were received. This final rule converts the interim rule with a minor change, making corresponding changes to FAR 13.501.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6 and 13

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 6, which was published in the **Federal Register** at 70 FR 11739, March 9, 2005, as a final rule with the following changes:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 13.501 by revising the first sentences of paragraphs (a)(2)(iii) and (a)(2)(iv) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(2) * * *

(iii) For a proposed contract exceeding $10,000,000 but not exceeding $50,000,000 or, for DoD, NASA, and the Coast Guard, not exceeding $75,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. * * *

(iv) For a proposed contract exceeding $50,000,000 or, for DoD, NASA, and the Coast Guard, $75,000,000, the official described in 6.304(a)(4) must approve the justification and approval. * * *

* * * * *

[FR Doc. 05–19472 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–06; FAR Case 2004–036; Item VI]

RIN 9000–AK11

Federal Acquisition Regulation; Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to finalize, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. This rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 added landscaping and pest control services to the Small Business Competitiveness Demonstration Program.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–06, FAR case 2004–036.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375). Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals.

The Councils published the interim rule in the **Federal Register** at 70 FR 11740, March 9, 2005, with a request for comments by May 9, 2005. One respondent submitted a comment in response to the interim rule. The comment is addressed below.

Comment: The rule should be changed to provide small businesses, including ''mom and pop'' businesses, the first opportunity to compete for awards under NAICS codes 561730 and 561710.

Councils' response: The rule implements a statute which added landscaping and pest control services to the Small Business Competitiveness Demonstration Program. The Councils have no authority to change the statute or implementing regulation to make the suggested change. The Councils note, however, that the rule applies only to acquisitions over the emerging small business reserve amount which is currently $25,000. Agencies will continue to set-aside, for emerging small businesses, acquisitions at or below the emerging small business reserve amount consistent with the requirements in FAR subparts 19.1007(c). In addition, agencies are allowed to reinstate the small business set-asides if needed to meet their assigned goals.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, pertains to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. The analysis is summarized as follows:

Final Regulatory Flexibility Analysis

This final rule amends FAR Parts 19 and 52 to implement Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). Section 821 provides for the addition of two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to the Small Business Competitiveness Demonstration Program under the designated industry groups.

The changes inform the agencies of the new additions to the Small Business Competitiveness Demonstration Program and also gives the Contracting Officer the specific ''Emerging small business reserve amount'' of $25,000 for the designated groups.

The objective of the final rule is to further assess the ability of small business concerns to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. The implementation of section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 will change the FAR as follows: (1) revises the designated industry groups to include Exterminating and Pest Control Services and Landscaping Services in FAR 19.1002(1) and 19.1005; (2) deletes the word ''four'' before designated industry groups in the FAR.

There was one comment that addressed the IRFA. The comment is addressed below:

Comment: The rule should be changed to provide small businesses, including ''mom and pop'' businesses, the first opportunity to compete for awards under NAICS codes 561730 and 561710.

Agency's Response: The rule implements a statute which added landscaping and pest control services to the Small Business Competitiveness Demonstration Program. The Councils have no authority to change the statute or implementing regulation to make the suggested change. The Councils note, however, that the rule applies only to acquisitions over the emerging small business reserve amount which is currently $25,000. Agencies will continue to set-aside, for emerging small businesses, acquisitions at or below the emerging small business reserve amount consistent with the requirements in FAR subparts 19.1007(c). In addition, agencies are allowed to reinstate the small business set-asides if needed to meet their assigned goals.

The final rule will apply to all small business concerns that compete on Federal procurements falling under NAICS codes 561730 and 561710. Based on Governmentwide data retrieved from the Federal Procurement Data System (FPDS) for the specified NAICS codes, approximately 141 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in fiscal year 2002 for NAICS code 561730. This represents about 88 percent of all contracts awarded with unrestricted competition for that NAICS code. In fiscal year 2003 there were 116 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 81 percent of all contracts awarded with unrestricted competition for that NAICS codes. FPDS data also show that 25 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in fiscal year 2002 for NAICS code 561710. This represents about 56 percent of all contracts awarded with unrestricted competition for that NAICS code. In fiscal year 2003 there were 17 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 77 percent of all contracts awarded with unrestricted competition for that NAICS codes. It is estimated that small business concerns will continue to be successful in winning at least one-half to three-fourths of awards on an unrestricted

basis when these designated industry groups are added to the Small Business Competitiveness Demonstration Programs given the history of their success in recent unrestricted competitive Government acquisitions falling under NAICS codes 561730 and 561710. Additional data retrieved from FPDS show that the number of small business set-asides for NAICS code 561730 in fiscal years 2002 and 2003 combined was approximately 952 and the number of small business set-asides for NAICS code 561710 in fiscal years 2002 and 2003 combined was approximately 96. The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because previously set-aside acquisitions for services falling within NAICS codes 561730 and 561710 will now be included in the designated industry groups of the Small Business Competitiveness Demonstration Program. FAR 19.1007(b) states that ''Solicitations for acquisitions in any of the designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under FAR 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal. Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8), the HUBZone Program (see Subpart 19.13), and the Service-Disabled Veteran-Owned Small Business Procurement Program (see Subpart 19.14).'' Given the large number of awards made under these NAICS codes, it is anticipated that the addition of the two NAICS codes to the Small Business Competitiveness Demonstration Program will promote an increased number of opportunities for small business concerns to develop teaming arrangements and joint ventures.

The purpose of the Competitiveness Demonstration Program is to assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in FAR 19.1005 and will include the addition of landscaping and pest control services to the designated industry groups. The final rule imposes no reporting, recordkeeping, or other compliance requirements.

The final rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this final rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 19 and 52, which was published at 70 FR 11740, March 9, 2005, is adopted as a final rule without change.

[FR Doc. 05–19473 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 28

[FAC 2005–06; FAR Case 2003–029; Item VII]

RIN 9000–AK01

Federal Acquisition Regulation; Powers of Attorney for Bid Bonds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to establish that a copy of an original power of attorney, including a photocopy or facsimile copy, when submitted in support of a bid bond, is sufficient evidence of the authority to bind the surety. The authenticity and enforceability of the power of attorney at the time of the bid opening will be treated as a matter of responsibility.

DATES: *Effective Date:* September 30, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–06, FAR case 2003–029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. There has been a significant level of controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney.

Since 1999, a series of GAO decisions has rejected telefaxed as well as photocopied powers of attorney. The latest decision from GAO (*All Seasons Construction, Inc.*, B–291166.2, Dec. 6, 2002) has been interpreted by industry and procuring agencies to require a contracting officer to inspect the power of attorney at bid opening to ascertain that the signatures are original and applied after generation of the documents. This case law has created a costly and unworkable requirement for the surety industry and left contracting officers with an almost impossible standard to enforce. More recently, on January 9, 2004, the U.S. Court of Federal Claims, in *Hawaiian Dredging Construction, Co. v. U.S.*, 59 Fed. Cl.205 (2004), issued a ruling highlighting that the FAR does not require an original signature on the document serving as evidence of authority to bind the surety. The court was critical of GAO's reasoning in the *All Seasons* case. In response to the split between the two bid protest fora and the quandary shared by industry and government in implementing a workable standard to be applied at bid opening, the Councils agreed to a revision to FAR part 28 that would remove the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening as a matter of responsibility.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 51936, August 23, 2004, and 46 public comments were received. A resolution of the public comments follows:

Summary of the Public Comments/ Disposition

Some commenters agree with the proposed rule and expressed appreciation for the clarification the proposed rule would bring to a presently unworkable situation.

Comment: By making authenticity of the power of attorney a matter of responsibility, where small businesses are concerned, a contracting officer's decision becomes subject to referral to the Small Business Administration (SBA) for a certificate of competency. To resolve this issue, the commenter suggested the following language for the FAR: ''Subpart 19.6 does not apply to determinations of responsibility of sureties or on the acceptability of powers of attorney.'' This language is based on GAO case law holding that acceptability of individual bid bond sureties need not be referred to the SBA because such determinations are based solely on the qualifications of the surety and not the small business offeror.

Response: The Councils concur with the interpretation of GAO case law cited. Referral to SBA of a contracting officer's non-responsibility finding, pursuant to FAR subpart 19.6, is a matter arising entirely out of the small business' qualifications, not that of the surety. However, in the interest of being entirely clear on this issue, the Councils adopted language in paragraph 28.101–3(f), that a non-responsibility determination is not subject to the Certificate of Competency process if the surety has disavowed the validity of the power of attorney.

Comment: One commenter requests clarification regarding the extent to which the review of a power of attorney is a matter of responsiveness. As written, the issue is only one of responsiveness if a signed and dated power of attorney is not submitted. The commenter requests a revision to state a power of attorney should be rejected if it is obvious that the document is invalid. The commenter has received powers of attorney that indicate on their face that they have expired or do not name the individual who signed the bid bond.

Response: The Councils disagree and feel the proposed rule makes clear the responsiveness determination is very narrow. To insert language requiring the contracting officer to determine whether a document is facially valid is not helpful unless we define facial validity.

The proposed language intends to establish a simple dichotomy—

• Where an attorney-in-fact has signed the bid bond, the bidder must provide a signed and dated power of attorney to evidence the attorney-in-fact's authority to bind the surety; failure to provide a power of attorney renders the bid non-responsive;

• Any and all questions regarding the authenticity and enforceability of the power of attorney are not matters of responsiveness and, as such, shall be handled by the contracting officer after bid opening when he/she can seek clarification from the surety.

Finally, the bidder cannot be said to have an unfair opportunity to improve its bid when it is only the surety, not the bidder, that can vouch for the authenticity of a power of attorney. Paragraph (e) has been added to FAR 28.101–3 clarifying that in those circumstances where a surety rejects a power of attorney as invalid, the bidder may not substitute a new surety.

Comment: Several comments asked for clarification that modern forms of signatures and dates (*i.e.* digital, mechanically applied, or printed), in addition to facsimiles, be accepted as valid.

Response: The Councils have determined it appropriate to adopt language listing, with greater specificity than was provided in the original proposal, ''electronic, mechanically-applied and printed signatures, seals, and dates'' as acceptable evidence of authority to bind the surety. The Councils believe these terms are broad enough to encompass present practices within the surety industry, particularly because a broad consortium of surety associations suggested the language. As such, we find it would be redundant to include ''digital'' within the list.

Comment: There should be a revision to require powers of attorney to include notarized signatures and the contact information for the signers and the notary in order to authenticate the power of attorney.

Response: The Councils do not agree. First, it detracts from the two-part rule established by the proposed language to identify specific requirements for powers of attorney. Second, while the comment is well taken and a requirement for contact information would prove helpful to the contracting officer, such detailed directions are not appropriate for a FAR provision.

Comment: Representatives from the surety industry submitted a three-part comment as follows:

1. The sureties recommend certain additions and deletions of commas in paragraph (b), which would clarify that ''original'' modifies ''power of attorney'' and that original powers of attorney, photocopied original powers of attorney, and facsimile copied original powers of attorney are all acceptable means of establishing an attorney in fact's authority.

2. The sureties recommend removing the signature and date of the power of attorney as matters of responsiveness in paragraph (c)(1), alleging that this would undercut the goal of avoiding situations where a low bid must be rejected simply based on formatting errors. The sureties note that FAR 28.101–4(c)(7) and (8) require an agency to waive the fact that a bid bond itself was not signed, dated, or erroneously dated.

3. The sureties recommend a new paragraph (d) to clarify that a ''printed'' power of attorney is an ''original'' and that a photocopied or facsimile copied copy of a ''printed'' power of attorney is also acceptable. The sureties suggest this clarification is necessary because FAR part 2 does not define ''original'' and the *All Seasons* decision called into question the reliability of a printed power of attorney because the contracting officer could not be certain whether the signature had been applied before or after printing. FAR part 2 should be revised to include a broader definition of ''facsimile'' and a definition of ''original.'' Because the proposed revision is intended to remove the confusion created by the *All Seasons* reasoning, the sureties suggest further clarifying that printed or mechanically-applied signatures, dates, and seals are acceptable without regard to the order in which they are affixed. The sureties also note that printed documents with printed signatures and seals are widely accepted as originals in commercial practice.

Response: 1. The Councils agree that the suggested comma placement clarifies that original powers of attorney, as well as photocopies of originals and facsimiles of originals, are all acceptable as evidence of authority to bind the surety. It also clarifies that a photocopy of a non-original is *not* acceptable.

2. The Councils are concerned that removing the text ''signed and dated'' would harm the integrity of the procurement process. Making the lack of a signature and date an issue of responsibility would mean they could be added after bid opening and a document that was not otherwise legally sufficient could be made so. The Councils feel a signature and date are so fundamental to the document that they must be present at bid opening. However, the rule does state that any questions regarding the authenticity of signature(s) and date(s) on the power of

attorney are treated as matters of responsibility and, therefore, can be addressed after bid opening.

The Councils note the sureties cite FAR 28.101–4(c)(7) and (8) in support of their position; however, we distinguish that the FAR also makes clear that in order for the contracting officer to waive the lack of an offeror's signature and date on the bid bond, the bond must otherwise be acceptable. It is our reading that this would mean the bond must bear the signature of the surety or its representative and that all related documents, including any power of attorney, must be acceptable. It is not incongruous to require a signature and date on the power of attorney and we, therefore, retain the stated language in the proposed rule.

3. The Councils concur with the suggestion to add a paragraph detailing those means of applying signatures and dates that are commonly acceptable as ''original'' in commercial practice. We accept the clarification in the interest of partnering with the surety industry to achieve a rule that works well for both sureties and contracting officers. It is the intent of the proposed rule to come to a resolution that is consistent with sureties' commercial practices and protections, while ensuring the Government can accept the lowest bid, confident that the bid bond binds the surety. The revision clarifies the undoing of the GAO-made rule requiring signatures and dates to be applied *after* the power of attorney is printed. This ''wet signature'' requirement is the most onerous and unworkable aspect of the *All Seasons* holding. As revised, a power of attorney with signatures and dates applied electronically and printed at the time the hard copy document is generated is clearly acceptable, as was intended by the original proposal.

The Councils considered all comments before agreeing to convert this FAR case from a proposed rule to a final rule with changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it reads as follows:

Final Regulatory Flexibility Analysis

FAR Case 2003–029

Powers of Attorney for Bid Bonds

This Final Regulatory Flexibility Analysis has been prepared consistent with 5 U.S.C. 604.

1. Reasons for the action.

This FAR case was initiated at the request of the Office of Federal Procurement Policy to resolve controversy relating to the standards for powers of attorney accompanying bid bonds.

2. Objectives of, and legal basis for, the action.

The objective of this final rule is to establish clear and uniform standards for powers of attorney accompanying bid bonds which will allow the contracting officer to make more informed decisions that are in the best interest of the Government.

3. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comment.

There were no specific public comments that addressed the IRFA.

4. Description of, and, where feasible, estimate of the number of small entities to which the final rule will apply.

This final rule applies to all small entity bidders involved in Federal acquisitions that require bid bonds. It also applies to small entities who are sureties and attorneys-in-fact.

5. Description of projected reporting, recordkeeping, and other compliance requirements of the final rule.

This rule will have a beneficial impact on small entities, including small businesses within the surety industry, because the rule will amend the Federal Acquisition Regulation to change from the current structured process to a process that is used by the surety industry. These commercial practices are used by the surety industry when doing non-Government work and small businesses are familiar with these practices. By allowing commercial practices, the current costly and unworkable requirements are eliminated, which removes the burden from small businesses when doing business with the Government.

The intent of this rule is to establish clear and uniform standards for powers of attorney accompanying bid bonds that are in the best interest of both the Government and industry. This rule removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening. From the public comments received, this rule is deemed valuable because the changes being made to the process will guarantee that bidders will no longer be thrown out of the acquisition process prematurely when there is a question of validity. The rule changes are beneficial for all involved in the acquisition process.

The final rule does not impose any new reporting, recordkeeping, or other information collection requirements. It will reduce the information collection requirement by simplifying the standards for an acceptable evidence of power of attorney in support of a bid bond.

6. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

This final rule does not duplicate, overlap, or conflict with other relevant Federal rules.

7. Significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

There were no significant alternatives to the proposed rule, which accomplish the stated objectives. This rule will have a beneficial impact on small entities, which are bidders in Federal acquisitions that require bid bonds, as well as the associated sureties and attorneys-in-fact.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 19 and 28

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 28 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 28 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.602–1 [Amended]

■ 2. Amend section 19.602–1 in the parenthetical in the introductory text of paragraph (a) by adding '', but for sureties see 28.101–3(f) and 28.203(c)'' after the word ''subcontracting''.

PART 28—BONDS AND INSURANCE

■ 3. Revise section 28.101–3 to read as follows:

28.101–3 Authority of an attorney-in-fact for a bid bond.

(a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.

(b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.

(c) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.

(d) The contracting officer shall—

(1) Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and

(2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.

(e)(1) If the contracting officer contacts the surety to validate the power of attorney, the contracting officer shall document the file providing, at a minimum, the following information:

(i) Name of person contacted.

(ii) Date and time of contact.

(iii) Response of the surety.

(2) If, upon investigation, the surety declares the power of attorney to have been valid at the time of bid opening, the contracting officer may require correction of any technical error.

(3) If the surety declares the power of attorney to have been invalid, the contracting officer shall not allow the bidder to substitute a replacement power of attorney or a replacement surety.

(f) Determinations of non-responsibility based on the unacceptability of a power of attorney are not subject to the Certificate of Competency process of subpart 19.6 if the surety has disavowed the validity of the power of attorney.

[FR Doc. 05–19474 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–06; FAR Case 2005–002; Item VIII]

RIN 9000–AK28

Federal Acquisition Regulation; Expiration of the Price Evaluation Adjustment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to cancel for civilian agencies (except National Aeronautics and Space Administration (NASA) and Coast Guard) the Small Disadvantaged Business (SDB) price evaluation adjustment which was originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102). Civilian agencies (except NASA and Coast Guard) are not authorized to apply the price evaluation adjustment to their acquisitions.

DATES: *Effective Date:* September 30, 2005.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before November 29, 2005, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–06, FAR case 2005–002, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2005–002@gsa.gov*. Include FAC 2005–06, FAR case 2005–002 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–06, FAR case 2005–002, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–06, FAR case 2005–002.

SUPPLEMENTARY INFORMATION:

A. Background

The small disadvantaged business price evaluation adjustment for civilian agencies, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This provision, as implemented in FAR subpart 19.11, authorized agencies to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. As a result of its expiration for civilian agencies (except NASA and Coast Guard), civilian agencies (except NASA and Coast Guard) have no statutory authority to apply the small disadvantaged business price evaluation adjustment to their acquisitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because certain small disadvantaged business concerns for specific North American Industry Classification System (NAICS) codes will no longer benefit from the price evaluation adjustment in competitive acquisitions. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The small disadvantaged business price evaluation adjustment for civilian agencies other than National Aeronautics and Space Administration (NASA) and Coast Guard,

originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This provision, as implemented in Federal Acquisition Regulation subpart 19.11 authorized agencies to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. This change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* because civilian agencies (excluding NASA and Coast Guard) will no longer have the authority to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. However, the price evaluation adjustment is still authorized for the Department of Defense, U.S. Coast Guard, and NASA.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Part 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601 *et seq.* (FAC 2005–06, FAR case 2005–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the small disadvantaged business price evaluation adjustment for civilian agencies other than NASA and Coast Guard, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This revision to the FAR is necessary to ensure that civilian agencies (except Coast Guard and NASA) are aware that the price evaluation adjustment should not be applied to their acquisitions. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.1102 by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and adding a new paragraph (a) to read as follows:

19.1102 Applicability.

(a) This subpart applies to the Department of Defense, National Aeronautics and Space Administration, and the U.S. Coast Guard. Civilian agencies do not have the statutory authority (originally authorized in the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102)) for use of the Small Disadvantaged Business (SDB) price evaluation adjustment.

* * * * *

■ 2. Amend section 19.1103 by revising paragraph (a)(2) to read as follows:

19.1103 Procedures.

(a)* * *

(2) An otherwise successful offer from a historically black college or university or minority institution.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(10)(i) of the clause to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEP 2005)

* * * * *

(b)* * *

(10)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEP 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

* * * * *

■ 4. Amend section 52.219–23 by revising the date of the clause and paragraph (b)(1)(ii) of the clause to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (SEP 2005)

* * * * *

(b) Evaluation adjustment. (1)* * *

(ii) An otherwise successful offer from a historically black college or university or minority institution.

* * * * *

[FR Doc. 05–19475 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2004–006; Item IX]

RIN 9000–AK06

Federal Acquisition Regulation; Accounting for Unallowable Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising language regarding accounting for unallowable costs. The final rule adds language which provides specific criteria on the use of statistical sampling as a method to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also revises the language regarding advance agreements by adding statistical sampling methods as an example for which advance agreements between the

contracting officers and contractors may be appropriate.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2004–006.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed FAR rule for public comment in the **Federal Register** at 68 FR 28108, May 22, 2003, under FAR case 2002–006. The proposed rule related to FAR 31.201–6, Accounting for unallowable costs, and to FAR 31.204, Application of principles and procedures. No public comments were received on the proposed rule relating to FAR 31.204, and the Councils decided that the FAR 31.204 proposed rule should be converted to a final rule with no changes to the proposed rule. Public comments were received on the proposed rule relating to FAR 31.201–6, and the Councils decided to make substantive changes to the proposed rule and published a second proposed rule under separate FAR case 2004–006 in the **Federal Register** at 69 FR 58014, September 28, 2004, with a request for comments by November 29, 2004.

Five respondents submitted public comments in response to the second proposed FAR rule. A discussion of these public comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule to address the concerns raised in the public comments. Differences between the second proposed rule and the final rule are discussed in Comments 1, 2, and 3, below.

Public Comments

Application of statistical sampling, FAR 31.201–6(c)(2).

Comment 1: One respondent recommends clarifying paragraph (c)(2) to make it clear that this paragraph refers to contractors, not the Government. The respondent therefore recommends revising the first sentence to read as follows:

''Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the following criteria are met.''

Councils' response: Concur. The Councils believe that the proposed change will enhance the clarity of the rule and emphasize that it is the contractor's ultimate responsibility for complying with the accounting and presentation of unallowable costs as prescribed in paragraph (c)(1). Therefore, the respondent's proposed language is added to FAR 31.201–6(c)(2). While it is the intent of the Councils to specifically state that statistical sampling is an acceptable method for contractors to comply with the identification and segregation requirements of this rule, this language in no way binds or limits the Government from performing their responsibilities in fulfilling the requirements for establishing indirect cost rates in accordance with FAR Subpart 42.7, Indirect Cost Rates.

Application of penalties, FAR 31.201–6(c)(3).

*Comment 2:*Three respondents recommend that the proposed paragraph (c)(3) be revised. One respondent believes that the proposed paragraph (c)(3) will cause more confusion than it is intended to preclude. This respondent states that the penalty provisions of FAR 42.709 can be invoked in statistical sampling by using a simpler paragraph that reads as follows:

''For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.''

The second respondent believes that the proposed paragraph (c)(3) should be simplified to improve clarity and eliminate redundant text from FAR 42.709. This respondent believes that the penalty provisions in FAR 42.709 can be applied when sampling is used with a simpler, more concise paragraph that reads as follows:

''Any unallowable indirect costs that are not excluded from the universe, either as part of the projection of sample results or separate review of transactions, are subject to the penalty provisions at FAR 42.709.''

The third respondent believes that the proposed paragraph (c)(3) is rather confusing and subject to misinterpretation. This respondent therefore recommends that the paragraph be revised to read as follows:

''For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the associated projected amount to the sampling universe derived from that sampled item is also subject to the same penalty provisions.''

This respondent states that if the proposed language is retained, the Councils need to address the following:

(a) The wording in (c)(3)(i) ''excluded from any final indirect rate proposal'' is technically incorrect. The amounts are not ''excluded'' from the ''proposal'', as the proposal would include gross, withdrawn, and claimed/recoverable costs. The respondent therefore recommends that this would need to be revised to read ''The following amounts must be excluded from any proposed final indirect rates or....''

(b) Proposed paragraph (c)(3)(i)(B) is not clear as to what is meant by ''determined to be unallowable.'' This could relate to paragraph (b) of this cost principle or it could relate to FAR 42.709–3(b) or something else.

(c) Proposed paragraph (c)(3)(iii) appears redundant and unnecessary. Paragraph (c)(3)(iii) provides ''...are subject to the penalties provisions at FAR 42.709.'' By virtue of this reference that includes contract applicability language at 42.709–6, it does not appear necessary to provide another paragraph with the same type of contract applicability language.

Councils' response: Concur. The Councils agree that the proposed language was potentially confusing. The Councils therefore recommend simplifying the language at FAR 31.201–6(c)(3) to read as follows:

''For any indirect cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.''

The Councils note that the intent of the subject language in both the proposed rule and the final rule is the same.

Advance agreements, FAR 31.201–6(c)(4) and FAR 31.109.

Comment 3: Two respondents assert that paragraph (c)(4) is written in such a way as to suggest there is a requirement for an advance agreement. One respondent does not believe the potentially prescriptive language at paragraph (c)(4) is consistent with the examples of costs at FAR 31.109(h). Therefore, this respondent recommends eliminating this paragraph. The respondent further notes that if it is determined that the advance agreement reference must remain, the following text would be more acceptable to the contracting parties:

''An advance agreement (see 31.109) with respect to compliance with subparagraph (c)(3) of this subsection may be useful and desirable.''

The second respondent believes it would be more appropriate and consistent with the verbiage used in other cost principles to simply reference FAR 31.109, such as is done in FAR 31.205–37. This respondent therefore recommends that the language at FAR 31.109(h) include sampling for

unallowable costs as another example of items that may require an advance agreement, and that paragraph (c)(4) be revised to read as follows:

''See 31.109 regarding advance agreements.''

Councils' response: Partially concur. The Councils do not believe the proposed language requires an advance agreement. The proposed language states that use of statistical sampling should be the subject of an advance agreement. While the Councils believe that the advance agreement language should remain in FAR 31.201–6, the Councils do agree that it would be helpful to add sampling to FAR 31.109 as an example of the type of item for which an advance agreement may be appropriate, and therefore have added ''statistical sampling methods'' to FAR 31.109(a) and 31.109(h)(17).

Comment 4: One respondent asserts that if the proposed rule is enacted, the rule should require an advance agreement that specifies what an adequate sampling plan entails. As such, this respondent recommends that paragraph (c)(4) require an advance agreement that documents the objective of the sample, the population, the measures, the sampling parameters, the confidence level, the precision, the sampling design, and the decision rule.

Councils' response: Nonconcur. The Councils believe the comments submitted in response to the proposed rule and the second proposed rule demonstrate that it is preferable to provide general criteria rather than specific requirements. The use of specific requirements reduce the flexibility of the contracting parties to apply sampling in a manner that maximizes its efficient use while continuing to protect the Government interests. The Councils believe that the requirements for the sample to be a reasonable representation of the sampling universe, to permit audit verification, and to apply penalties to any projected amounts provides adequate protection for the Government without unduly restricting the effective use of proper statistical sampling techniques.

In addition, the Councils do not believe an advance agreement should be required. However, the Councils believe it is important that the rule clearly state that it is the contractor's responsibility to prove compliance with the sampling criteria in FAR 31.201–6(c) when no advance agreement exists. When a contractor elects to use statistical sampling without entering into an advance agreement, the contractor is at risk that the Government will find the sampling plan in noncompliance with FAR 31.201–6(c), and the Government will perform their own sampling or even possibly a 100 percent review of the costs at issue. In those cases where the contracting officer or contracting officer's representative challenges the contractor's sampling methods, and no advance agreement exists, the burden of proof should be on the contractor to establish that the sampling methods comply with the FAR requirements. The final rule at paragraph (c)(5) has been revised to include this provision. To mitigate the potential for disputes regarding the acceptability of sampling methods, it is generally advisable for the contractor and the Government to enter into an advance agreement. Since the advance agreement has a significant impact on the accounting for unallowable costs, the final rule at paragraph (c)(4) requires that the contracting officer request auditor input prior to entering into such agreements.

Directly associated costs, FAR 31.201–6(e).

Comment 5: One respondent believes that FAR 31.201–6(e) violates CAS 405 (Accounting for Unallowable Costs) and is subject to legal challenge by any Government contractor to which a procuring or administering agency might seek to apply it. This respondent believes that the proposed rule sends a message to the contracting community that contracting agencies follow CAS only where it suits them to do so, and may disregard CAS where it does not suit their interests. This respondent asserts that paragraph (e) ''...departs from the CAS 405 definition and substitutes a 'materiality' test for the 'but for' test and further extends the materiality test to encompass even more factors that are unrelated to the CAS definition. While a suitable materiality test could itself be reconcilable with the CAS 'but for' test, the FAR has gone well beyond this point to encompass additional factors that directly contradict the CAS 405 definition.'' The respondent states that the FAR could be revised to comply with CAS 405. The respondent asserts that ''a point clearly comes at which a particular cost becomes so significant that common sense tells us the 'but for' test is satisfied. Thus, a test seeking to establish that point using the term 'materiality' would be a valid implementation of CAS 405.'' The respondent therefore recommends that the FAR specify ''a sensible materiality test and delete the other two current criteria of FAR 31.201–6(e).'' The respondent further noted that it has submitted copies of its comments to the CAS Board and suggested that the Board ''review the conflict between CAS and FAR in the identification and allocation of directly associated cost and take what steps it may consider appropriate to defend its exclusive jurisdiction in this area.''

Councils' response: Nonconcur. The Councils do not believe the language at paragraph (e) conflicts with CAS 405. The current language at FAR 31.201–6(e)(2), which has been in the FAR for over twenty years, has not been ruled to conflict with CAS 405 by any Court or by the CAS Board. The Councils believe this is important language, because it provides contracting personnel and contractors with specific information on when to treat salaries and expenses as directly associated costs. As such, the Councils believe this language should be retained.

Sampling for large dollar transactions, FAR 31.201(c)(2)(ii).

Comment 6: One respondent believes that the proposed requirement at FAR 31.201–6(c)(2)(ii) that ''all large dollar and high risk transactions are separately reviewed for unallowable costs and excluded from the sampling process'' is overly restrictive. This respondent notes that its past experience has shown that sampling for unallowable costs is most efficient and effective for high volume accounts with low dollar, low risk transactions. Therefore, the respondent believes that for a given universe, there is often no need or benefit to set aside transactions for 100 percent review. The respondent notes that identification of any transactions requiring 100 percent review and the establishment of sampling strata or clusters as necessary are all inherent requirements of developing a sampling plan that provides a ''reasonable representation of the sampling universe,'' as required by FAR 31.201–6(c)(2)(i). The respondent therefore recommends that the language in paragraph (c)(2)(ii) be deleted.

Councils' response: Nonconcur. The Councils agree with the respondent that a reasonable representation of the sampling universe would require elimination of items that due to their nature and/or dollar amount are not reasonably similar to the other items in the universe. However, the Councils also believe this is an important area that requires clear language to assure that all parties understand that large dollar and high risk items must be removed from the sampling universe. Therefore, paragraph (c)(2)(ii) has been retained.

Use of statistical sampling, General.

Comment 7: A respondent believes that the use of statistical sampling will

result in confusion, inconsistencies, and disputes. The respondent believes that statistical sampling should not replace accounting policies and procedures for properly identifying and segregating unallowable costs. The respondent states that unallowable costs should be appropriately identified and excluded when they are initially incurred and recorded. The respondent asserts that this internal control assures that unallowable costs are accounted for and excluded from a contractor's submission. The respondent states that allowing statistical sampling for identifying unallowable costs weakens this key internal control. The respondent further notes that if sampling is to be permitted, the Government and the contractor must develop the expertise in statistical sampling to ensure sampling plans are adequate and executed properly.

Councils' response: Nonconcur. The Councils note that CAS 405 (Accounting for Unallowable Costs) already permits sampling. As such, it would be a conflict with the CAS to state that sampling is not permitted for CAS-covered contracts. While the FAR could add a specific provision stating that statistical sampling is not permitted for non-CAS covered contracts, the Councils do not believe this would be a prudent business action. The Councils believe that the use of statistical sampling should apply to all contracts covered by FAR Part 31, Contract Cost Principles and Procedures. The purpose of the proposed rule is to provide some general structure to the process. Statistical sampling, when properly applied, is acceptable for both segregating unallowable costs and verifying that such costs have been properly segregated (either by specific identification or using appropriate sampling techniques). A properly executed sampling plan should approximate the total unallowable costs from the sample universe. Internal controls and procedures established to meet the sampling objectives and evaluation of the sample selections should still be a key component of this process. The Councils are also concerned that it would be oxymoronic to argue that statistical sampling is not acceptable for segregating unallowable costs but is acceptable for verifying the validity of that segregation. As to the expertise that needs to be developed, the Councils again note that statistical sampling is already permitted by CAS, and is often used in both industry and the Government for many different types of applications. Thus, the Councils believe the necessary expertise for applying statistical sampling already exists within both the Government and the contractor community.

Comment 8: One respondent believes that the FAR should include guidance similar to that issued by the IRS in Revenue Procedure 2004–29. This respondent states that this Revenue Procedure establishes guidelines for using statistical sampling methods for meals and entertainment expenses. The respondent notes that this Revenue Procedure covered the sampling plan standards, the methods and attributes to be used with a sampling plan, the sampling documentation standards, and the technical formulas. In addition, the procedure specified a 95 percent one-sided confidence level.

Councils' response: Nonconcur. The Councils believe that such prescriptive language is not necessary. The Councils believe that it is preferable to provide for more general requirements regarding acceptable statistical methods than to provide a detailed listing of what must be present for each and every situation.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.109 by—

■ a. Removing the period from the end of the third sentence of paragraph (a) and adding ''and on statistical sampling methodologies at 31.201–6(c).'' in its place; and

■ b. Removing from the introductory text of paragraph (h) the words ''of costs''; removing from paragraph (h)(15) the last word ''and''; removing the period from the end of paragraph (h)(16) and adding ''; and'' in its place; and adding paragraph (h)(17) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(17) Statistical sampling methods (see 31.201–6(c)(4).

■ 3. Amend section 31.201–6 by—

■ a. Removing from the second sentence of paragraph (a) and the first sentence of paragraph (b) the word ''which'' each time it appears (3 times) and adding the word ''that'' in its place;

■ b. Revising paragraph (c);

■ c. Removing from the first sentence of paragraph (d) the word ''which'' the first time it appears and adding ''that'' in its place; and

■ d. Removing from the end of paragraph (e)(1)(ii) the word ''or'' and adding the word ''and'' in its place; and revising paragraph (e)(3) to read as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the criteria in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this subsection are met:

(i) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(ii) Any large dollar value or high risk transaction is separately reviewed for unallowable costs and excluded from the sampling process.

(iii) The statistical sampling permits audit verification.

(3) For any indirect cost in the selected sample that is subject to the

penalty provisions at 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of 31.109 between the contractor and the cognizant administrative contracting officer or Federal official. The advance agreement should specify the basic characteristics of the sampling process. The cognizant administrative contracting officer or Federal official shall request input from the cognizant auditor before entering into any such agreements.

(5) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the contracting officer or the contracting officer's representative, the burden of proof shall be on the contractor to establish that such a method meets the criteria in paragraph (c)(2) of this subsection.

* * * * *

(e)(1) * * *

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

[FR Doc. 05–19476 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2003–002; Item X]

RIN 9000–AJ81

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the relocation cost principle to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: costs of finding a new home; costs of travel to the new location; and costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–06, FAR case 2003–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils originally considered expanding the reimbursement of relocation costs on a lump-sum basis under FAR case 1997–032, Relocation Costs. However, the Councils decided to study this issue further under a separate case and published a final rule on the remainder of FAR case 1997–032 in the **Federal Register** at 67 FR 43516, June 27, 2002. On October 24, 2002, the Councils published a Notice of Request for Comments in the **Federal Register** (67 FR 65468) with a list of questions regarding the use of a lump-sum approach for reimbursing employee relocation expenses. After reviewing the public comments that were submitted in response to that **Federal Register** notice, the Councils held a public meeting on February 6, 2003, to further explore the views of interested parties on this issue.

Public comments and the discussions at the public meeting revealed that, in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted by FAR 31.205–35(b)(4), it is common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses. A FAR case was opened to expand the relocation cost principle to permit lump-sum reimbursements for these three types of costs.

The Councils published a proposed FAR rule in the **Federal Register** at 68 FR 69264, December 11, 2003, with a request for comments by February 9, 2004. Seven respondents submitted comments on the proposed FAR rule. Two respondents supported the proposed rule, four respondents opposed it, and one respondent requested clarification. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Section B, Comment 1, and Section C below.

B. Public Comments

No standard for measuring reasonableness

1. *Comment:* Four respondents opposed the proposed rule and expressed the concern that with contractors spending significant amounts on employee relocations, the Government would have no objective standard for evaluating the reasonableness of the new lump-sum amounts being claimed.

After conducting surveys that suggest ''contractors are incurring hundreds of millions of dollars of relocation costs annually,'' the first respondent expressed ''significant concern as to where an auditor, contracting officer, or contractor could turn to gather adequate data to make a determination as to the appropriateness and reasonableness of the lump-sum method or resulting amount.'' The respondent concluded its letter by stating it ''believes that paying a lump-sum for such significant amounts places an unacceptable risk on the Government and creates an excessive audit task to establish allowability of relocation costs.''

Also citing the above mentioned survey of the large amounts of relocation costs allocated to cost reimbursement contracts each year, the second respondent stated that ''allowing lump-sum reimbursement of these costs without supporting documentation is not in the best interests of the Government'' because ''the proposed revision would subject millions of dollars to a subjective test of reasonableness requiring Government auditors, contracting officials, attorneys, and others to expend significantly more resources to determine the reasonableness of the claimed costs, review the determination, and resolve disputes between the Government and the contractor involving disallowed costs.'' The respondent went on to suggest ''contractors will also incur additional expenses in excess of any administrative costs saved supporting the reasonableness of the relocation costs.''

The third respondent based its opposition to the proposed rule on ''the millions of taxpayer dollars that will be wasted on this special interest giveaway'' and suggested that the Government's motivation in pursuing it was ''not wanting to disappoint contractors.'' The respondent argued further that ''contractors favor this approach, not because of any administrative burden reduction, but rather because it leads to higher levels of reimbursement without any need to justify costs.'' Finally, the respondent expressed its opinion that ''with few exceptions, these (relocation) costs should only be reimbursed on an 'actual cost' basis.''

The fourth respondent did not submit any original comments, but simply forwarded the third respondent's comments with an accompanying statement that it ''fully concurs in the substantive objections expressed'' therein.

Councils' response: The Councils believe that a provision permitting the expanded use of lump-sum reimbursements should be added to the relocation cost principle. Such a provision is expected to reduce the accounting and administrative burden of that cost principle on contractors and lead to faster relocations.

The Councils are very receptive to the important concerns expressed by the respondents. The Councils believe that the words ''on an appropriate lump-sum basis to the individual employee'' in the proposed rule were intended to condition the allowability of the new lump-sum reimbursements on contractors by providing sufficient visibility into the component cost projections used in developing the lump-sum amounts to permit an audit determination of their reasonableness. However, the comments make it abundantly clear that such a requirement needs to be more explicit. The Councils certainly want to eliminate any possible public perception of this proposed rule change as a ''blank check'' for contractors and to ensure that the Government only reimburses *reasonable* costs. Accordingly, the Councils have added language at FAR 31.205–35(b)(6)(i) that makes the costs of lump-sum payments to relocating employees for house-hunting, final move, and temporary lodging expenses allowable only when ''adequately supported by data on the individual elements (*e.g.*, transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation.'' This requirement should provide essentially the same audit visibility into the reasonableness of lump-sum payments as currently exists for actual relocation costs.

Relocation lump-sums as a common commercial practice

2. *Comment:* In opposing the proposed rule, one respondent also asserted that the use of lump-sum payments for travel and temporary lodging related relocation costs ''is not a predominant industry practice at this time.'' The respondent explained that it recently reviewed the current relocation policies in place at four large contractor locations and found that three of these four contractors use a single corporate-wide policy for their employee relocation reimbursement programs. Even though one of these three companies claims it is a predominantly commercial company and the other two companies also have a substantial commercial business base, the respondent pointed out that none of the three has established a lump-sum option for its commercial business segments.

In addition, the respondent cited an August 2003 news release from a relocation management firm which stated that only 30 percent of the companies it had recently surveyed said they were using lump-sums to cover travel and temporary lodging expenses. Finally, the respondent pointed out that it had recently been advised by a relocation management firm that, shortly before Dr. John Hamre left the Department of Defense, he ''shut down'' an effort by the relocation management firm and the Defense Integrated Travel and Relocation Solutions (DITRS) office to put together a plan for using lump-sums for DoD civilian relocations.

After reviewing the responses to the October 24, 2002, **Federal Register** Notice of Request for Comments (67 FR 65468), a respondent questioned ''whether the FAR Council has obtained sufficient information to support its assertion that it is now common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses.'' The respondent observed that of the eight respondents who responded to that notice, one respondent's letter gave no specifics on the number of companies using lump-sum reimbursements, and another respondent stated that its 2001 survey showed that 55 companies out of 109 contacted were using lump-sum reimbursements.

In supporting the proposed rule, one respondent agreed ''with the Councils' statement that the use of lump-sum payments is a common commercial practice'' and expressed the belief ''that the proposed rule will help align relocation cost reimbursement policies with commercial best practices.'' Another respondent also agreed that the proposed changes ''are in keeping with current commercial business practice'' and explained that ''beginning in 1993 with the Revenue Reconciliation Act, many companies moved to lump-sum allowances for what became taxable reimbursements to the home-finding, temporary living, and final move portions of relocation policy.'' The respondent concluded with its opinion that ''the recommended revision will enable Government contractors to implement this best practice and take advantage of a tested and proven process efficiency that has been an accepted part of the commercial sector's relocation programs for over a decade.''

Councils' response: While the use of lump-sum reimbursements for selected relocation expenses may not be the predominant commercial practice at this time, the Councils believe there is ample evidence that the use of such payments is a common and growing commercial practice. The survey data cited by the respondents support this assessment. In addition, a relocation management firm that has been in business for more than 70 years stated at the February 6, 2003, public meeting and in its subsequent public comments that lump-sum reimbursement is now a common commercial practice for house-hunting, final move, and temporary lodging costs.

The Councils do not find it surprising that contractors who wish to maintain a single, corporate-wide policy for reimbursing relocation costs continue to apply a policy which parallels the current cost principle, even though they may have significant commercial business. The revised relocation cost principle will give such firms an additional option for the first time on Government contracts that could well become their corporate-wide standard in the future.

Finally, it is the Councils' understanding that DoD terminated its two-year initiative to reengineer relocation policies and procedures and disbanded the DITRS office which oversaw that effort due to a lack of funds and interest from the military departments. And while the relocation management firm stated during its presentation at the February 6, 2003, public meeting that the Federal Deposit Insurance Corporation is currently using lump-sum reimbursements for its employees' relocation costs, this appears to be an exception within the

Federal Government. However, even if lump-sum reimbursements for Federal employee relocation expenses are relatively rare, the purpose of this case is to recognize a common and growing commercial best practice in the relocation cost principle that should benefit both contractors and the Government.

Allowability of lump-sum payments

3. *Comment:* While supporting the effort to expand the use of lump-sum reimbursements for contractor employee relocation costs, one respondent suggested that the revised paragraph (b)(4) needs to include ''a clear affirmative statement that the lump-sum payments are allowable costs'' to avoid any possible confusion. In addition, the respondent recommended that the words ''to the individual employee'' be deleted from the revised paragraph (b)(4) because ''contractors should not have to demonstrate on an individual basis that the lump-sum payments are reasonable and appropriate for each relocating employee.'' Finally, the respondent recommended that the Councils eliminate the current ceilings on allowable home sale and purchase costs of 14 percent and 5 percent, respectively.

Councils' response: Nonconcur. The Councils do not agree that any additional language is necessary to avoid confusion regarding the allowability of the specified lump-sum payments. The Councils believe it is very clear from the language at FAR 31.205–35(b)(6)(i) that lump-sum payments to employees for any of these three types of relocation costs will be allowable if the requisite criteria are met. The Councils also believe that the data provided by the contractor on the component cost projections used in developing its lump-sum amounts must be ''based on the circumstances of the particular employee's relocation,'' such as family size, city, and number of vehicles. Otherwise, the lump-sum amount paid could be excessive, and therefore unreasonable, for a given relocation. Finally, the current ceilings on allowable home sale and purchase costs are outside the scope of this case. (Incidentally, the relocation management firm indicated at the February 6, 2003, public meeting that such costs are seldom included in lump-sum relocation payments.)

Add the three types of employee relocation costs to current lump-sum cap for miscellaneous expenses

4. *Comment:* One respondent suggested that if the proposed rule is not withdrawn, it ''does not object to adding the three additional types of employee relocation costs, *i.e.*, (1) the costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging, in addition to the existing 'miscellaneous expenses' that would be subject to a $5,000 lump-sum reimbursement, per employee move.'' The respondent offered this alternative ''in the interest of promoting greater flexibility within the existing relocation cost principle, but without increasing overall costs to taxpayers.''

Councils' response: Nonconcur. Under its cost-type contracts, the Government is obligated to pay the contractor's allocable and reasonable costs of contract performance. Not only would the respondent's proposal be fundamentally unfair to contractors, but it would also severely undermine the basic rationale for this proposed rule change. The current cap on miscellaneous relocation costs at FAR 31.205–35(b)(4) was increased to $5,000 in June 2002 based on survey data published by the Employee Relocation Council regarding the median amount of such payments in the commercial sector. There is no logical reason to arbitrarily add house-hunting, final travel, and temporary lodging costs to this separate lump-sum cap. The cost principles should ensure that contractors are treated fairly, consistent with sound public policy.

Proposed rule would make Federal employees second class citizens

5. *Comment:* One respondent expressed concern ''that this proposal would make Federal employees second class citizens vis-á-vis their contractor counterparts with respect to relocation expenses.'' The respondent concluded by stating that ''in no case should increases in lump-sum payments beyond $5,000 per contractor employee be considered until ... Federal employees are afforded the same advantages as their contractor counterparts.''

Councils' response: Nonconcur. While the Councils understand that the respondent is particularly sensitive to what it perceives to be preferential treatment of contractor employees, the Councils do not believe the allowability of contractor relocation costs must parallel exactly the treatment afforded Federal employees. It is now a common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses, and the Councils believe the relocation cost principle should be revised to permit contractors the option of using this methodology. The language added at FAR 31.205–35(b)(6)(i) will ensure that, just as when reimbursement is based on actual expenses, only *reasonable* amounts are allowed for lump-sum reimbursements of these three types of relocation costs. This additional flexibility should help promote increased entry into the Federal marketplace by firms that have previously been hesitant to do so, resulting in increased competition on future purchases.

Clarification of current lump-sum cap for miscellaneous expenses

6. *Comment:* A respondent asked: ''Is the proposed lump-sum amount of $5K applicable to both the continental United States (CONUS) and outside CONUS relocations?''

Councils' response: The $5,000 cap on allowable lump-sum reimbursements for miscellaneous relocation expenses is a current, not proposed, limitation at FAR 31.205–35(b)(4). It applies to all contractor employee relocations, regardless of location.

C. Additional Change—No adjustments

The Councils are concerned that contractors who reimburse employee relocation costs on a lump-sum basis could make additional after-the-fact payments to employees whose actual costs exceeded the lump-sum amount. To address this concern, the Councils added the following limitation at FAR 31.205–35(b)(6)(ii): ''When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.''

D. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

E. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule. For Fiscal Year 2003, only 2.4 percent of all contract actions were cost contracts awarded to small businesses.

F. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the

changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–35 by revising paragraph (b)(4); and adding paragraphs (b)(5) and (b)(6) to read as follows:

31.205–35 Relocation costs.

* * * * *

(b)* * *

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except as provided for in paragraphs (b)(5) and (b)(6) of this subsection.

(5) For miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a lump-sum amount, not to exceed $5,000, may be allowed in lieu of actual costs.

(6)(i) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (e.g., transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation:

(A) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(B) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(C) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(ii) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

* * * * *

[FR Doc. 05–19477 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2001–021; Item XI]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the ''training and education costs'' contract cost principle. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs. The final rule eliminates several specific limitations on the allowability of costs associated with the various categories of education, eliminates the disparate treatment of full-time and part-time undergraduate education costs, and limits allowable costs to training and education related to the field in which the employee is working or may reasonably be expected to work. The rule makes job-related training and education costs generally allowable, except for six public policy exceptions that are retained from the current cost principle. Except for the six expressly unallowable cost exceptions, the reasonableness of specific contractor training and education costs is assessed by reference to the FAR section entitled ''Determining reasonableness.''

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jerry Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2001–021.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed FAR rule in the **Federal Register** (67 FR 34810) on May 15, 2002, with a request for comments by July 15, 2002. On June 11, 2002, an amendment was published in the **Federal Register** (67 FR 40136) to correct an error in the Supplementary Information section accompanying the proposed rule. Six respondents submitted public comments. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** (69 FR 4436) on January 29, 2004, with a request for comments by March 29, 2004.

Nine respondents submitted comments in response to the second proposed FAR rule. A discussion of these public comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the second proposed rule and final rule are discussed in Section B, Comments 1, 2, 4, and 6, below.

B. Public Comments

Proposed paragraph (a): Education for sole purpose to obtain academic degree or qualify for job.

Comment 1: Seven respondents generally supported the proposed rule; however, they strongly recommended that proposed paragraph (a) be deleted before issuing a final rule. Several of the respondents pointed out that paragraph (a) is inconsistent with the Councils' own **Federal Register** comments that they ''support upward mobility, job retraining, and educational advancement.'' In this regard, one respondent stated its concern that paragraph (a) would prevent it from providing ''the educational opportunities that we have provided for decades.'' Some respondents complained that it had ''no idea how one is to discern whether the training and education relates 'solely' to obtaining an academic degree or to a particular position'' and that ''implementation of this provision will be burdensome and lead to contested costs; hardly a simplification that increases the clarity of the cost principle.''

Several respondents challenged the fundamental notion that the allowability of contractor employee training and education costs must parallel exactly the treatment afforded Federal employees. One respondent wrote—

''We believe that utilization of the test of whether the Federal Government is willing to reimburse education costs for Federal employees is an inappropriate basis for determining cost allowability. The

benchmark for measuring the cost reasonableness of payments for education and training should be based on commercial practices that encourage the continued training and education of our workforce. Accordingly, we recommend that paragraph 31.205–44(a) of the proposed rule ... be deleted prior to issuing the final rule.''

To further support this position, another respondent pointed out that Congress has long advocated increased use of commercial practices in the Federal acquisition process:

''Congress has consistently endorsed and supported the adoption of commercial practices—not Government practices—in the Government procurement arena. The most recent example is the 2004 DoD Authorization Legislation (P.L. 108–136), Section 1423. This section prescribes the establishment of a panel to propagate the use of commercial practices by, among other things, reviewing all regulations.''

One respondent stated that the proposed paragraph (a) ''will decrease industry's ability to assist the U.S. Government in ensuring future economic strength'' through private sector training and education which often involves employees ''in Government–authorized, socioeconomic/disadvantaged programs that encourage upward mobility.'' In support of this assessment, the respondent provided a detailed description of the benefits that accrue to the company, the Government, and society in general from its Employee Scholar Program (ESP):

''There are over 9,000 U.S. employees (approximately 25% of whom are hourly workers) currently participating in respondent's ESP. These people are pursuing degrees from colleges and universities that many undoubtedly could not have afforded to fund on their own. ESP is encouraging educational pursuits that support social, political, and business needs, for example:

- Approximately 40% of the respondent's employees participating from the aerospace and defense business units in the ESP are obtaining first degrees;
- Over 80% of the degrees awarded to the respondent's employees from the aerospace and defense business units over the last 3 years are in the business/management or technical/engineering areas (less than 3% of degrees awarded were not in current or possible future job-related areas);
- Female and Hispanic employees participate in the ESP at about 11/2 times their proportion in the respondent's workforce;
- ESP participants have increased loyalty and motivation to remain with the respondent. They leave their jobs at a lower rate than the general population, thereby enhancing retention and reducing allowable recruiting, relocation, and job training costs;
- ESP graduates are promoted at a higher rate than the general population;
- The average age of a ESP participant is 39 years old (suggesting that most participants are of an age where they are able to use their education on the job, and seek further education in the future to keep their skills current).''

Finally, one respondent summarized the confusion expressed by several respondents over the purpose and effect of the proposed paragraph (a):

''However, we are troubled by the statement in the comment section that the Councils' intent is also to ''... make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training.'' This statement and the resulting proposed paragraph 31.205–44(a) nullify the benefits of simplification and adopting commercial practices. We are perplexed as to how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and how these costs potentially could be classified as unallowable.''

Councils' response: The Councils agree that the allowability of contractor employee training and education costs, to the extent that it is job related, should be rooted in sound commercial practices that encourage upward mobility in the private sector workforce. The Councils also are acutely sensitive to the concern about the appearance of disparate treatment of contractor and Federal employees' full-time undergraduate level educational expenses. Therefore, the Councils carefully examined the comments of the largest Federal employee union, the American Federation of Government Employees (AFGE), and noted that the inclusion of the statutory limitations on agency payment of Federal employee educational costs in paragraph (a) apparently did little to temper the union's strong opposition to the proposed rule. Instead, AFGE focused its criticism primarily on the lack therein of a job-relatedness requirement for allowable contractor employee full-time undergraduate educational costs, while it asserted that a demonstration of job-relatedness would be essential before the Government would pay these expenses for a Federal employee (see Comment 6, below). Accordingly, the Councils have deleted the proposed paragraph (a) and added the following allowability requirement for all training and education costs in the introductory sentence of the final rule: ''Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:'' The Councils believe that this broad accommodation of AFGE's principal criticism of the proposed rule constitutes sound public policy.

Proposed paragraph (d): Full-time graduate level education.

Comment 2: Three respondents expressed concern that the proposed paragraph (d) would make currently allowable full-time graduate level educational costs unallowable. They pointed out that under the current coverage for such education, only the costs in excess of two years or the length of the graduate degree program, whichever is less, are unallowable. They argued that, in contrast, the proposed paragraph (d) would make the entire cost (not just the excess) of the graduate program unallowable if it exceeded two years or the length of the degree program.

Councils' response: Concur. There was never any intent to change this aspect of the current allowability criteria for full-time graduate level educational costs. Accordingly, the Councils have revised this coverage (now paragraph (c) of the final rule) to clarify that only the costs in excess of two school years or the length of the degree program, whichever is less, are unallowable.

Proposed paragraph (e): Grants.

Comment 3: Two respondents recommended that the proposed paragraph (e) on grants to educational or training institutions be deleted ''because this subject matter is adequately covered by FAR 31.205–8, Contributions or donations.''

Councils' response: Nonconcur. The Councils believe that the proposed paragraph (e) (which is essentially the same as the current paragraph (g), Grants) provides very helpful guidance regarding specific types of unallowable grants to educational or training institutions which should be retained. To avoid confusion, the Councils have also added back the explanatory words ''are considered contributions and'' from the current paragraph (g) to this provision (now paragraph (d) of the final rule).

Proposed paragraph (g): Employee dependents college savings plans.

Comment 4: Three respondents expressed concern that the proposed paragraph (g), which makes costs of university and college plans for employee dependents unallowable, could be misinterpreted to make the administrative costs of such plans unallowable. One of the respondents suggested changing the words ''Costs of'' to ''Contractor contributions to'' to clarify the intent of this provision.

Councils' response: Concur. The **Federal Register** notice accompanying

the January 29, 2004, proposed rule provided the following response to essentially this same industry concern:

''The cost principle does not address the administrative costs of such plans; therefore, the administrative costs are allowable, subject to the reasonableness criteria at FAR 31.201–3. However, any contributions to the plan by the company for employee dependents would be unallowable under the redesignated paragraph (g) in this second proposed rule.''

Even though the Councils are unaware of any problems involving the misapplication of this provision to the administrative costs of college savings plans, they see no problem in making the suggested clarifying change. As stated above, the intent of the proposed paragraph (g) (which is the same as that of the current paragraph (j), *Employee dependent education plans*) is to make contractor contributions to college savings plans for employee dependents unallowable. Reasonable administrative costs for college savings plans funded by employee contributions should continue to be allowable. In revising this provision (now paragraph (f) of the final rule), the Councils have also used the appropriate financial planning term, ''college savings plans.''

Current paragraph (h): Advance agreements.

Comment 5: Two respondents argued that in view of the potential changes in the allowability of full-time graduate level educational costs in the proposed paragraph (d), it is necessary to retain the current paragraph (h), Advance agreements, in order to keep currently allowable costs from becoming unallowable. This is because the current paragraph (h) permits advance agreements that would make costs allowable ''in excess of those otherwise allowable under paragraphs (c) and (d)'' of the current cost principle.

Councils' response: Nonconcur. Since the Councils have revised the coverage for full-time graduate level educational costs in the final rule to prevent a possible ''all or nothing'' interpretation (see Comment 2, above), this should no longer be a concern for industry.

Job-relatedness.

Comment 6: In opposing the proposed rule, one respondent categorized it as ''another attempt on the part of the Director of Procurement and Acquisition Policy at DoD to accord contractors and contractor employees further benefits not granted to Federal employees in similar circumstances.'' Continuing that theme, the respondent expressed its principal criticism of the proposed rule as follows:

''The proposed rule makes at least one extremely offensive change to the contract cost allowability rules that is not accorded to Federal employees, despite the misleading statement contained in the proposal's preamble. Permitting contractors to claim as an allowable cost, the costs of providing employees with full-time undergraduate education, amounts to nothing more than a contractor scholarship program, at taxpayer expense. While the respondent, as a matter of public policy, encourages Federal employees to further their education and training, it is well understood, that when taxpayers pick up these costs, such education and training must reasonably relate to the employee's actual or anticipated duties.''

Councils' response: Partially concur. The Councils see significant benefits to both the Government and industry in publishing the final rule in this case. However, the Councils agree with the respondent that job-relatedness should be a requirement for allowable contractor employee full-time undergraduate level educational costs. In fact, the Councils have added such an allowability requirement for all training and education costs in the introductory sentence of the recommended final rule (see Comment 1, above). The Councils believe this change constitutes sound public policy.

Applicability to Federal employees.

Comment 7: One respondent stated ''The combination of training and education for the 1102 series is critical, without the Government paying for the required courses and training, most employees could not afford to get the degree required.'' The respondent concluded with the request to ''Please reconsider and completely fund the education and training of current employees.''

Councils' response: The respondent apparently confused the proposed rule as applying to Federal employees. The proposed rule does not apply to Federal employees.

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle discussed in this rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Revise section 31.205–44 to read as follows:

31.205–44 Training and education costs.

Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:

(a) Overtime compensation for training and education is unallowable.

(b) The cost of salaries for attending undergraduate level classes or part-time graduate level classes during working hours is unallowable, except when unusual circumstances do not permit attendance at such classes outside of regular working hours.

(c) Costs of tuition, fees, training materials and textbooks, subsistence, salary, and any other payments in connection with full-time graduate level education are unallowable for any portion of the program that exceeds two school years or the length of the degree program, whichever is less.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(e) Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary

level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.

(f) Contractor contributions to college savings plans for employee dependents are unallowable.

[FR Doc. 05–19478 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–06 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–06 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

List of Rules in FAC 2005–06

Item	Subject	FAR case	Analyst
*I	Information Technology Security (Interim)	2004–018	Davis.
II	Improvements in Contracting for Architect-EngineerServices	2004–001	Davis.
III	Title 40 of United States Code Reference Corrections	2005–010	Zaffos.
*IV	Implementation of the Anti-Lobbying Statute	1989–093	Woodson.
V	Increased Justification and Approval Threshold forDOD, NASA, and Coast Guard	2004–037	Jackson.
*VI	Addition of Landscaping and Pest Control Services to theSmall Business Competitiveness Demonstration Program.	2004–036	Marshall.
*VII	Powers of Attorney for Bid Bonds	2003–029	Davis.
*VIII	Expiration of the Price Evaluation Adjustment(Interim)	2005–002	Cundiff.
IX	Accounting for Unallowable Costs	2004–006	Olson.
X	Reimbursement of Relocation Costs on a Lump-Sum Basis	2003–002	Olson.
XI	Training and Education Cost Principle	2001–021	Olson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–06 amends the FAR as specified below:

*Item I—Information Technology Security (FAR Case 2004–018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001)

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005–010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

*Item IV—Implementation of the Anti-Lobbying Statute (FAR Case 1989–093)

This final rule converts the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990 to a final rule with minor changes amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to Title 31 of the United States Code, entitled ''Limitations on the use of funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the

Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of $100,000 or a Federal commitment to insure or guarantee a loan in excess of $150,000 must disclose lobbying with other than appropriated funds. The rule requires contracting officers, in accordance with FAR 3.808, to insert in all solicitations and contracts expected to exceed $100,000 the provision at FAR 52.203–11, ''Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction,'' and the clause at FAR 52.203–12, ''Limitations on Payments to Influence Certain Federal Transactions.''

Item V—Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard (FAR Case 2004–037)

This final rule converts the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50 million to $75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B). In addition, corresponding changes have been made to FAR 13.501. The rule will reduce administrative burden for ordering activities.

***Item VI—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036)**

This final rule finalizes, without change, the interim rule published in the **Federal Register** at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.

***Item VII—Powers of Attorney for Bid Bonds (FAR Case 2003–029)**

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to resolve the controversy surrounding contracting officers' decisions regarding the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of attorney from a contracting officer's responsiveness determination, which is based solely on documents available at the time of bid opening. Instead, the rule instructs contracting officers to address these issues after bid opening.

***Item VIII—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)**

This interim rule cancels the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change is required because the statutory authority for the adjustments has expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item IX—Accounting for Unallowable Costs (FAR Case 2004–006)

This final rule amends FAR 31.201–6, Accounting for unallowable costs, by adding paragraphs (c)(2) through (c)(5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31.109, Advance agreements, by adding ''statistical sampling methods'' as an example of the type of item for which an advance agreement may be appropriate. The case was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with FAR Part 31.

Item X—Reimbursement of Relocation Costs on a Lump-Sum Basis (FAR Case 2003–002)

This final rule amends FAR 31.205–35 to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

Item XI—Training and Education Cost Principle (FAR Case 2001–021)

This final rule amends the FAR by revising the contract cost principle at FAR 31.205–44, Training and education costs. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–19479 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Friday,
September 30, 2005

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

The Argo Project: Global Ocean Observations for Understanding and Prediction of Climate Variability; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027300–5242–02]

The Argo Project: Global Ocean Observations for Understanding and Prediction of Climate Variability

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Office of Oceanic and Atmospheric Research (OAR), on behalf of the National Ocean Partnership Program (NOPP), is entertaining preliminary proposals (Letters of Intent) and subsequently full proposals for sustaining (*e.g.*, deployment, data management, technology infusion) the U.S. contribution to the global Argo array of profiling floats and develop the technology, principles and protocols to transition Argo to pre-operational status. It is expected that approximately $9,200,000 annually will be available for the project.

DATES: October 31, 2005, 5 p.m. (ET)—Letter of Intent in electronic, facsimile, or hard copy form due. Letters of Intent are used for assessment purposes only and are not a requirement for proposal submission.

December 16, 2005, 5 p.m. (ET)—Proposal due.

Proposals submitted through *http://www.grants.gov* will be accompanied by a data and time receipt indication on them. If an applicant does not have internet access, hard copy proposals will be accepted and date recorded when they are received in the program office. Electronic or hard copies of proposals received after the deadline will not be considered and hard copy applications will be returned to the sender.

ADDRESSES: Letters of Intent should be sent electronically to: *Steve.Piotrowicz@noaa.gov.* For those applicants without internet access, hard copies may be mailed to Ocean.US, 2300 Clarendon Blvd., Suite 1350, Arlington, VA 22201; Attn: Stephen R. Piotrowicz. Faxes may be sent to: Ocean.US, Attn: Stephen R. Piotrowicz at (703) 588–0872. Proposals should be submitted through Grants.gov. For those applicants without Internet access, hard copies may be sent to Ocean.US, 2300 Clarendon Blvd., Suite 1350, Arlington, VA 22201; Attn: Dr. Stephen R. Piotrowicz.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen R. Piotrowicz, telephone: (703) 588–0850; facsimile: (703) 588–0872; e-mail: *Steve.Piotrowicz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Program Authority

Authority: 49 U.S.C. 44720 (b); 33 U.S.C. 883d, 15 U.S.C. 2904; 15 U.S.C. 2931–2934, (CFDA No. 11.431)—CLIMATE AND ATMOSPHERIC RESEARCH.

Electronic Access

The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov FIND Web site. This announcement will also be available at the NOAA Web site: *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. This **Federal Register** notice is available through the NOAA home page at: *http://www.noaa.gov.*

Background

The NOPP was established by 10 U.S.C. 7902 *et seq.* to (1) promote the national goals of assuring national security, advancing economic development, protecting quality of life, and strengthening science education and communication through improved knowledge of the ocean; and (2) coordinate and strengthen oceanographic efforts in support of those goals by identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication. In 1999, Argo was identified as a key NOPP program and selected for implementation. Beginning in FY 2006 NOAA intends to complete the development and deployment of the initial phase of Argo and begin to demonstrate the sustained operation of Argo. Contingent on the availability of appropriated funds, this phase of Argo is expected to continue for five years. The level of funding available each year will be dependent on appropriations.

Funding Availability

The Office of Oceanic and Atmospheric Research (OAR), on behalf of the National Ocean Partnership Program (NOPP), is entertaining letters of Intent and subsequently full proposals for implementing the next phase of the U.S. contribution to the global Argo array of profiling floats. Beginning in FY 2006 NOAA intends to complete the development and deployment of the initial phase of Argo and begin to demonstrate the sustained operation of Argo. Contingent on the availability of appropriated funds, this phase of Argo is expected to continue for five years. The level of funding available each year will be dependent on appropriations. It is expected that approximately $9,200,000 annually will be available for the project. It is expected that one, multi-investigator award will be made.

Eligibility

Extramural eligibility is not limited. Eligible applicants include institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other. **Please Note:** Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis for receipt of Federal funds.

Cost Sharing

Cost sharing or matching is not required; however, resource sharing amongst partners within NOPP programs is encouraged.

Letter of Intent

To prevent the expenditure of effort that may not be successful, proposers are encouraged to first submit Letters of Intent. Letters of Intent are used for assessment purposes only and are not a requirement for proposal submission. Letters of Intent must be single or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½″ x 11″ paper. The following information should be included:

(a) Title page: The title page should clearly identify the project area being addressed by starting the project title with ''The Argo Project: Global ocean observations for understanding and prediction of climate variability.'' Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being

requested should be listed for each budget period.

(b) A concise (2-page limit) description of the project. Proposers may wish to use the Evaluation Criteria for additional guidance in preparing the Letter of Intent.

(c) Resumes (1-page limit) of the Principal Investigators.

Evaluation and Selection Procedures

NOAA published its agency-wide solicitation entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2006'' for projects for Fiscal Year 2006 in the **Federal Register** on June 30, 2005 (70 FR 37766). The evaluation criteria and selection procedures for projects contained in that omnibus notice are applicable to this solicitation. Copies of this notice are available on the Internet at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML.* Further details on evaluation and selection criteria can be found in the full funding opportunity announcement.

Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

Limitation of Liability

Funding for this project is contingent upon the availability of FY 2006–2010 appropriations. Publication of this announcement does not obligate the Department of Commerce to award any funds if the program fails to receive funding or is cancelled because of other agency priorities. Renewal of an award to increase funding or extend the period of performance is at the discretion of the Department of Commerce.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: (*http://www.nepa.noaa.gov/*), including our NOAA Administrative Order 216–6 for NEPA, (*http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*), and the Council on Environmental Quality implementation regulations, (*http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required.

Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Preaward Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL and CD–346 have been approved by OMB under the respective control numbers 0348–0040 and 0348–0043. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this rule concerning grants, benefits, and contracts (5 U.S.C. section 553[a]). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regularity Flexibility Act (5 U.S.C. section 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: September 27, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–19644 Filed 9–29–05; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

Friday,
September 30, 2005

Part VII

The President

Presidential Determination No. 2005–37 of September 21, 2005—Presidential Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons

Federal Register
Vol. 70, No. 189
Friday, September 30, 2005

Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–37 of September 21, 2005

Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended, (the ''Act''), I hereby:

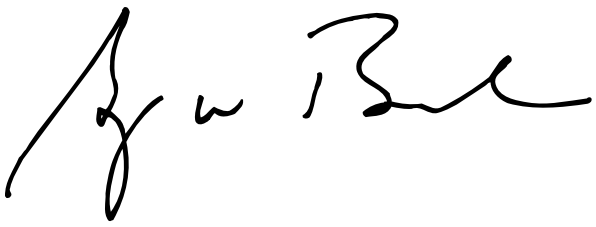
- Make the determination provided in section 110(d)(1)(A)(i) of the Act, with respect to Cambodia and Venezuela, not to provide certain funding for those countries' governments for fiscal year 2006, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;
- Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Burma, Cuba, and the Democratic People's Republic of Korea (DPRK), not to provide certain funding for those countries' governments for fiscal year 2006, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110 (b) of the Act;
- Make the determination provided in section 110(d)(3) of the Act, concerning the determinations of the Secretary of State with respect to Bolivia, Jamaica, Qatar, Sudan, Togo, and the United Arab Emirates;
- Determine, consistent with section 110(d)(4) of the Act, with respect to Cambodia, for all programs, projects, or activities of assistance for victims of trafficking in persons or to combat such trafficking, for promoting good governance, or which would have a significant adverse effect on vulnerable populations if suspended, that provision to Cambodia of the assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purpose of the Act or is otherwise in the national interest of the United States;
- Determine, consistent with section 110(d)(4) of the Act, with respect to Ecuador, that provision to Ecuador of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;
- Determine, consistent section 110(d)(4) of the Act, with respect to Kuwait that provision to Kuwait of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act is in the national interest of the United States;
- Determine, consistent with section 110(d)(4) of the Act, with respect to Saudi Arabia, that provision to Saudi Arabia of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act is in the national interest of the United States;

- Determine, consistent with section 110(d)(4) of the Act, with respect to Venezuela, for all programs, projects, or activities of assistance for victims of trafficking in persons or to combat such trafficking, or for strengthening the democratic process, including strengthening political parties and supporting electoral observation and monitoring and related programs, or for public diplomacy, that provision to Venezuela of the assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States;
- Determine, consistent with section 110(d)(4) of the Act, that assistance to Cambodia or Venezuela described in section 110(d)(1)(B) of the Act that
  - (1) is a regional program, project, or activity under which the total benefit to either Cambodia or Venezuela does not exceed 10 percent of the total value of such program, project, or activity; or
  - (2) has a its primary objective the addressing of basic human needs, as defined by the Department of the Treasury with respect to other, existing legislative mandate concerning U.S. participation in the multilateral development banks; or
  - (3) is complementary to or has similar policy objectives to programs being implemented bilaterally by the United States Government; or
  - (4) has as its primary objective the improvement of the country's legal system, including in areas that impact the country's ability to investigate and prosecute trafficking cases or otherwise improve implementation of a country's anti-trafficking policy, regulations or legislation; or
  - (5) is engaging a government, international organization, or civil society organization, and that seeks as its primary objective(s) to: (a) increase efforts to investigate and prosecute trafficking in persons crimes; (b) increase protection for victims of trafficking through better screening, identification, rescue/removal, aftercare (shelter, counseling) training and reintegration; or (c) expand prevention efforts through education and awareness campaigns highlighting the dangers of trafficking or training and economic empowerment of populations clearly at risk of falling victim to trafficking

would promote the purpose of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 21, 2005.

[FR Doc. 05–19786
Filed 9–29–05; 8:51 am]
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Federal Register

Vol. 70, No. 189

Friday, September 30, 2005

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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**
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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51999–52282 1
52283–52892 2
52893–53042 6
53043–53294 7
53295–53536 8
53537–53722 9
53723–53900 12
53901–54234 13
54235–54468 14
54469–54608 15
54609–54832 16
54833–55020 19
55021–55224 20
55225–55512 21
55513–55704 22
55705–56104 23
56105–56342 26
56343–56560 27
56561–56808 28
56809–57120 29
57121–57482 30

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 8, 2005) 54229
7921 52281
7922 53719
7923 53721
7924 54227
7925 54233
7926 54461
7927 54463
7928 54465
7929 54467
7930 55021
7931 55505
7932 55507
7933 55509
7934 55511
7935 56341

Executive Order:
13223 (See Notice of September 8, 2005) 54229
13224 (See Notice of September 21, 2005) 55703
13235 (See Notice of September 8, 2005) 54229
13253 (See Notice of September 8, 2005) 54229
13286 (See Notice of September 8, 2005) 54229

Administrative Orders:
Memorandum:
Memorandum of September 9, 2005 55015
Notices:
Notice of September 21, 2005 55703
Presidential Determinations:
No. 2004–45 of September 10, 2004 (See Presidential Determination No. 2005–35 of September 12, 2005) 54607
No. 2005–36 of September 14, 2005 56807
No. 2005–33 of August 29, 2005 55013
No. 2005–34 of September 9, 2005 55011
No. 2005–35 of September 12, 2005 54607
No. 2005–36 of September 14, 2005 56807
No. 2005–37 of September 21, 2005 57481

5 CFR

Proposed Rules:
250 54658

7 CFR

2 55705
97 54609
301 ..... 57121, 57122
371 55705
500 55706
762 56105
905 54235
916 56107
917 56107
920 56561
922 54833
946 53723
948 55711
966 53537
985 55713
993 54469
1033 56111
1216 55225
1405 52283
1430 56113

Proposed Rules:
56 56139
57 56139
205 54660
271 55776
273 55776
275 55776
277 55776
319 ..... 55036, 57206
925 56378
944 56378
987 53737
1005 55458
1007 55458
1435 53103

8 CFR

Proposed Rules:
Ch. I 52037

9 CFR

310 53043
318 53043

Proposed Rules:
3 55308
94 ..... 52158, 55513
381 53582

10 CFR

50 ..... 52893, 56809

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 30, 2005

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Onions grown in—
Idaho and Oregon; published 8-31-05
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Ocean and coastal resource management:
National Marine Sanctuary Program; artificial reef development; permit applications policy; published 9-30-05
DEFENSE DEPARTMENT
Acquisition regulations:
Advisory and assistance sevices; published 9-30-05
Aviation critical safety items and related services; quality control; published 9-30-05
Central contractor registration; published 9-30-05
Defense Logistics Agency waiver authority; published 9-30-05
Foreign taxation prohibition on U.S. assistance programs; published 9-30-05
Partnership Agreement 8(a) Program; extension; published 9-30-05
Federal Acquisition Regulation (FAR):
Anti-lobbying statute; implementation; published 9-30-05
Architect-engineer services contracting improvements; published 9-30-05
Bid bonds; powers of attorney; published 9-30-05
Increased justification and approval threshold for DoD, NASA, and Coast Guard; published 9-30-05
Information technology security; published 9-30-05
Price evaluation adjustment; expiration; published 9-30-05
Title 40 US Code reference corrections; published 9-30-05
Training and education cost principle; published 9-30-05
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans:
Interstate ozone transport; nitrogen oxides (NOx) SIP call, technical amendments, and Section 126 rules; response to court decisions
Georgia; significant contribution findings and rulemaking; stay; published 8-31-05
Air quality implementation plans; approval and promulgation; various States:
Colorado; published 8-1-05
Utah; published 8-1-05
Superfund program:
National oil and hazardous substances contingency plan priorities list; published 8-1-05
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay services and speech-to-speech services; published 8-31-05
Television broadcasting:
Satellite Home Viewer Extension and Reauthorization Act 0f 2004; implementation—
Alaska and Hawaii; carriage of analog and digital signals requirements; published 8-31-05
Satellite Home Viewer Extension and Reauthorization Act of 2004; implementation—
Alaska and Hawaii; carriage of analog and digital signals requirements; correction; published 9-7-05
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Anti-lobbying statute; implementation; published 9-30-05
Bid bonds; powers of attorney; published 9-30-05
Increased justification and approval threshold for DoD, NASA, and Coast Guard; published 9-30-05
Small business competitiveness demonstration program; landscaping and pest control services; published 9-30-05
Title 40 US Code reference corrections; published 9-30-05
Training and education cost principle; published 9-30-05
HOMELAND SECURITY DEPARTMENT
Coast Guard
Shipping and transportation; technical, organizational, and conforming amendments; published 9-30-05
INTERIOR DEPARTMENT
Native American Graves Protection and Repatriation Act; implementation:
Technical amendments; published 9-30-05
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Anti-lobbying statute; implementation; published 9-30-05
Architect-engineer services contracting improvements; published 9-30-05
Bid bonds; powers of attorney; published 9-30-05
Increased justification and approval threshold for DoD, NASA, and Coast Guard; published 9-30-05
Information technology security; published 9-30-05
Price evaluation adjustment; expiration; published 9-30-05
Training and education cost principle; published 9-30-05
OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
Grants, other financial assistance, and nonprocurement agreements; governmentwide guidance:
Governmentwide debarment and suspension (nonprocurement); Federal agency guidance; published 8-31-05
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 8-26-05
Boeing; published 9-15-05
Correction; published 9-30-05
Pratt & Whitney; published 8-26-05
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards; nonconforming vehicles, importation eligibility determinations; published 9-30-05
National Driver Register Problem Driver Pointer System; participation and data receipt procedures; published 9-2-05
TREASURY DEPARTMENT
Fiscal Service
Bonds and notes and securities, U.S. Treasury:
Legacy Treasury Direct and TreasuryDirect; systems update and regulations simplification; published 9-30-05
Book-entry and marketable book-entry Treasury bonds, notes, and bills:
Securities held in TreasuryDirect; published 9-30-05

RULES GOING INTO EFFECT OCTOBER 1, 2005

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Milk marketing orders:
Mideast; published 9-26-05
AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Fees:
Official inspection and weighing services; published 8-26-05
COMMERCE DEPARTMENT
Economic Development Administration
Economic Development Administration Reauthorization Act of 2004; implementation; regulatory revision; published 8-11-05
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—

Atlantic bluefin tuna; published 9-28-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Hospice wage index (FY 2006); published 8-4-05

Correction; published 9-30-05

Hospital inpatient prospective payment systems and 2006 FY rates; published 8-12-05

Correction; published 9-30-05

Inpatient rehabilitation facility prospective payment system (2006 FY); update; published 8-15-05

Correction; published 9-30-05

Prescription drug discount card; endorsed drug card sponsors; published 9-1-05

Skilled nursing facilities; prospective payment system and consolidating billing; published 8-4-05

Skilled nursing facilities; prospective payment system and consolidated billing

Correction; published 9-30-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

North Carolina; published 9-23-05

Outer Continental Shelf activities:

Gulf of Mexico; safety zones; published 7-29-05

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Potomac River, Washington, DC; published 9-30-05

Regattas and marine parades:

Chesapeakeman Ultra Triathlon, MD; published 9-30-05

Clarksville Hydroplane Challenge, VA; published 9-30-05

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

Interest assumptions for valuing and paying benefits; published 9-15-05

POSTAL SERVICE

Organization and administration:

Facility accessibility pursuant to Architectural Barriers Act; Postal Service standards; published 5-17-05

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Driver's hours of service—

Fatigue prevention; driver rest and sleep for safe operations; published 8-25-05

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad locomotive safety standards:

Event recorders; published 6-30-05

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazard communication requirements changes; labels and placards specifications for materials poisonous by inhalation; revisions; published 11-4-04

TREASURY DEPARTMENT

Thrift Supervision Office

Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Application and reporting requirements; published 8-31-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Ferret standards; humane handling, care, treatment, and transportation; comments due by 10-4-05; published 8-5-05 [FR 05-15516]

Plant-related quarantine, domestic:

Imported fire ants; comments due by 10-7-05; published 8-8-05 [FR 05-15623]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunication policies on specifications, acceptable materials, and standard contract forms; comments due by 10-4-05; published 8-5-05 [FR 05-13945]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Groundfish; comments due by 10-3-05; published 9-1-05 [FR 05-17454]

Pollock; comments due by 10-6-05; published 9-21-05 [FR 05-18750]

Pollock; comments due by 10-6-05; published 9-21-05 [FR 05-18751]

West Coast States and Western Pacific fisheries—

Salmon; recreational fishery adjustments; comments due by 10-6-05; published 9-21-05 [FR 05-18854]

West Coast salmon; comments due by 10-6-05; published 9-21-05 [FR 05-18853]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Electric utilities (Federal Power Act):

Electric Reliability Organization certification and electric reliability standards establishment, approval, and enforcement procedures; comments due by 10-7-05; published 9-7-05 [FR 05-17752]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Predictive emission monitoring systems; performance specifications; testing and monitoring provisions amendments; comments due by 10-7-05; published 8-8-05 [FR 05-15330]

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 ''PLUS'' (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. 3761/P.L. 109–72

Flexibility for Displaced Workers Act (Sept. 23, 2005; 119 Stat. 2013)

H.R. 3768/P.L. 109–73

Katrina Emergency Tax Relief Act of 2005 (Sept. 23, 2005; 119 Stat. 2016)

Last List September 23, 2005

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