



# Federal Register

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

**WHEN:** Wednesday, November 30, 2005  
9:00 a.m.–Noon

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

**RESERVATIONS:** (202) 741-6008



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# Rules and Regulations

Federal Register

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

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

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 268

[Docket No. OP-1239]

#### Rules Regarding Equal Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim rule with request for comments.

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

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

**DATES:** This interim rule is effective November 8, 2005.

**Applicability Date:** This interim rule is applicable to all decisions on access to Sensitive Information of the Board as of November 8, 2005.

**Comment Date:** Submit comments on or before January 9, 2006.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1239, by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail:

[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

• FAX: 202/452-3819 or 202/452-3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

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

#### SUPPLEMENTARY INFORMATION:

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

Currently, § 268.205 permits the employment of non-citizens in positions that do not require access to sensitive information, subject to a preference for citizens over equally qualified non-citizens. Positions that require access to sensitive information currently are reserved for United States citizens or "intending citizens" (that is, non-citizens seeking U.S. citizenship). Under the existing § 268.205, "sensitive information" is defined to mean—(1) Information of the Federal Open Market Committee (FOMC); (2) national security classified information; and (3) confidential supervisory information of the Board.

The framers of the Federal Reserve Act made special provision for the

Board to be free to hire staff independent of other provisions of law governing the federal government service in order to ensure that the Board is able to hire the highest possible quality of staff to obtain the "special talent" it needs to carry out its important responsibilities. *See*, comments of Senators Owen and Reed, 51 *Cong. Rec.* 1138, 1141 (1913). In recent years, the Board, like employers throughout the United States, has been having greater difficulty identifying qualified United States citizens, nationals, or "intending citizens" as candidates for positions in a number of important job families. In particular, the percentage of Ph.D economists graduating from U.S. universities who are citizens or permanent residents has declined steadily from 73 percent in 1980, to 54 percent in 1990, to 43 percent in 2001. In order to perform its statutory duties to implement monetary policy and serve as the lender of last resort (as well as its other statutory responsibilities), the Board must hire a significant number of Ph.D economists. The shrinking pool of graduates with Ph.D.'s in economics and other needed skills who are U.S. citizens, nationals, or "intending citizens" has prompted the Board to reconsider its hiring policies.

To address the diminishing number of available graduates with Ph.Ds in economics and other needed skills who are U.S. citizens, the Board proposes to revise its policy regarding hiring for positions that require access to sensitive information. This will allow the Board to hire qualified non-citizens in certain positions of importance to the Board's duties and for which a growing proportion of qualified candidates in the applicant pool are non-citizens. Currently, the Board does not hire individuals who are non-citizens into positions that require access to certain types of sensitive information unless the non-citizen intends to obtain and does, in fact, seek U.S. citizenship. The Board proposes to amend its rule to allow it to hire non-citizens without intention of becoming U.S. citizens into positions that require access to sensitive FOMC information in certain circumstances. The Board does not propose to change its policy governing access to national security information or confidential supervisory information. Moreover, while the Board's rule governs hiring,

access to FOMC information is ultimately limited by the rules of the FOMC.

The interim rule would retain the Board's preference for U.S. citizens and U.S. nationals over equally qualified non-citizens. Under both the current and interim rule, U.S. citizens, U.S. nationals, and intending citizens<sup>1</sup> (all of whom are now referred to as "Protected Individuals") may be hired into a position requiring access to sensitive information. The interim rule focuses only on non-citizens who do not intend to obtain U.S. citizenship and, in particular, on the hiring of these non-citizens into positions requiring access to FOMC information.

For purposes of hiring individuals into positions that require access to FOMC information, the interim rule would distinguish between non-citizens from a country on the Country List contained in the annual federal appropriations laws specifying countries, including a general category of "countries allied with the United States in a current defense effort," whose citizens are eligible to be hired as federal employees using appropriated funds and non-citizens from a country that is not on the Country List.<sup>2</sup> Because the Board's funds are not appropriated, the Board is not subject to this limitation on hiring. However, Congress periodically affirms that other government agencies may use appropriated funds to hire non-citizens from countries on the Country List. The rule uses the term "Country List" as a common point of reference.

Under the interim rule, the Board may hire into a position that requires access to Class III or Class II FOMC information a non-citizen who does not intend to obtain U.S. citizenship and who is from a country that is on the Country List.<sup>3</sup> In addition, if he or she meets three conditions set forth in the rule, that person may be granted access to Class I FOMC information. Those conditions are: (1) The employee's Division Director recommends the employee be given access to Class I FOMC information; (2) the employee has resided in the United States for at least six years and has been employed for at least two years with the Board and/or

with one or more of the Reserve Banks; and (3) the employee has passed a background investigation acceptable to the Board. If the Country List changes so that the employee's country is no longer on the Country List, the employee's access to Class II FOMC information would not be affected by the change in the Country List. Similarly, the employee would continue to be eligible for access to Class I information and may be granted such access if he or she meets the remaining conditions outlined above for employees from a country on the Country List.

Under the interim rule, the Board may hire into a position that requires access to Class III FOMC information a person who is a non-citizen without intention of becoming a U.S. citizen and who is from a country that is not on the Country List. Upon meeting the three conditions discussed above, a non-citizen from such a country may also be granted access to Class II information. However, the Board would not provide access to Class I information to a non-citizen from a country that is not on the Country List.

The interim rule does not change access by a non-citizen to confidential supervisory information or classified information. As result, the existing limitations on who may have access to this information would be continued.

Beyond the changes discussed above, the interim rule includes a more comprehensive definition of "FOMC information" that contains a description of the three internal security designations that apply to this information. The interim rule also replaces the citation to Executive Order 11356 with the citation to Executive Order 12958 entitled, "Classified National Security Information," as this executive order, and its amendments, control what information is considered classified. The definition of "confidential supervisory information" remains unchanged.

The interim rule also separately addresses what access is applicable to each of the three types of sensitive information, *i.e.*, FOMC information, classified information, and confidential supervisory information. For example, as discussed above, the interim rule provides new parameters for access that are applicable only to FOMC information. The rule would also change the present language on access to classified information to provide that access is determined by the applicable executive orders and amendments. This more general reference incorporates the current rule's exception for hiring a non-citizen for a position requiring access to classified information if he or

she is able to obtain a security clearance. Further, with respect to confidential supervisory information, the interim rule would specify that access to this information is limited to Protected Individuals (formerly citizens, nationals and intending citizens) with a need to know employed by the Board or by a Federal Reserve Bank.

The interim rule would also update some of the terminology used in the current rule. In this respect, the interim rule would substitute the term "Protected Individual" for "U.S. citizens and intending citizens." The term "Protected Individual" covers U.S. citizens, U.S. nationals, and aliens meeting the requirements of 8 U.S.C. 1324(a)(3)(B) who have filed a declaration of intention to become a citizen of the United States. This more inclusive term is consistent with existing immigration law, which no longer uses the term "intending citizen" but uses instead the term "Protected Individual."

Further, where the current rule refers only to "U.S. citizens," the interim rule would add the term "national" to make clear that both U.S. citizens and U.S. nationals are, in fact, similarly treated. The term "national" refers to certain individuals who are not citizens of the U.S. and typically are born in or are descendants of individuals in the outlying possessions of the U.S. Thus, the interim rule provides that the hiring preference is a preference for U.S. citizens and U.S. nationals over equally qualified non-citizens.

The Board also proposes to add a definition of "employee" to clarify the coverage of the rule and a definition of "national." The interim rule includes a revised definition of "non-citizen" that more accurately reflects its meaning.

This rule relates solely to matters of agency management or personnel, and, therefore, is not subject to the public notice and comment provisions of the Administrative Procedures Act, 5 U.S.C. 553(a)(2). However, the Board has in the past found public comment on this matter to be helpful and invites comment on this rule. While allowing comment, the Board has determined that it is unnecessary, and would be impracticable, to defer the effective date of this action until after notice and after public comments have been received and considered (5 U.S.C. 553(d)(3)). Issuance of this rule as an interim rule is appropriate, in any event, because the rule concerns only the internal management and personnel of the Board and is not subject to statutory delay. In addition, the Board is facing immediate hiring decisions that would be subject to this rule. The Board believes that

<sup>1</sup> An intending citizen is an individual who is a lawfully admitted permanent resident alien, refugee, or asylum grantee and who has evidenced an intention to become a U.S. citizen.

<sup>2</sup> The appropriations ban that contains the Country List is codified at 5 U.S.C. 3101 note. Which countries are considered to be "allied with the U.S. in a current defense effort," is a decision made by the Department of State, Office of the Assistant Legal Adviser for Treaty Affairs.

<sup>3</sup> FOMC information is classified as Class III, II, and I information, in increasing order of sensitivity.

issuance of the regulation as an interim rule is necessary for the Board to conduct its internal management in an expeditious and efficient manner. The Board will consider all public comments received and make changes in its procedures based on those comments where appropriate. On these bases, the Board has determined that good cause exists to make this action effective immediately. As this rule concerns only agency management or personnel, it is not a rule subject to the Congressional Review Act (CRA), 5 U.S.C. 804(3)(B), and therefore an analysis under the CRA is not required.

#### Regulatory Flexibility Act Analysis

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

#### Paperwork Reduction Act

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

#### Plain Language

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

#### List of Subjects in 12 CFR Part 268

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

#### Authority and Issuance

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

### PART 268—RULES REGARDING EQUAL OPPORTUNITY

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

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

■ 2. Revise 268.205 to read as follows

#### § 268.205 Employment of aliens; Access to sensitive information

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

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

(2) *Confidential Supervisory Information* means confidential supervisory information of the Board, as defined in 12 CFR 261.2(c).

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

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

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

(i) *Class I FOMC* generally applies to materials containing policymaker input, such as that related to monetary policy decisions at meetings, views expressed by policy makers on future policy, and identification of meeting participants who express particular views. Examples of Class I FOMC Information include, but are not limited to, the "Bluebook,"

drafts of meeting minutes, unreleased meeting transcripts, documents reflecting the preparation of semi-annual forecasts and related testimony, and certain sensitive internal memorandums and reports.

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

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

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

(7) *Non-Citizen* refers to any individual who is not a citizen (by birth or naturalization) of the United States.

(8) *Protected Individual* means—

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

(ii) An alien who:

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

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

(9) *Sensitive Information* means FOMC Information; Classified Information; and Confidential Supervisory Information.

(b) *Hiring.*

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

(2) *Preference.* Consistent with applicable law, where two applicants for employment at the Board are equally qualified for a position, the Board shall prefer the citizen or National of the United States over the equally qualified Non-Citizen.

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

(4) *Non-Citizens access to Sensitive Information.* The Board shall not hire a Non-Citizen, other than a Protected

Individual, into a position that requires access to Sensitive Information except in accordance with paragraph (c) below.

(c) *Access to Sensitive Information.*

(1) *Generally.* The Board will grant access to Sensitive Information only in accordance with the Board's rules and policies regarding access to Sensitive Information and, if applicable, the rules and policies of the FOMC.

(2) *FOMC Information.*

(i) *Access by a Non-Citizen from a country on the Country List.* An Employee, other than a Protected Individual, who is a Non-Citizen from a country that is on the Country List on the date the Employee begins employment with the Federal Reserve System shall be granted access to Class I FOMC Information only upon the recommendation of the Employee's Division Director after six years of residence in the United States, at least two of which include satisfactory employment by the Board and/or one or more of the Federal Reserve Banks, and a background investigation acceptable to the Board. If the Employee's country is deleted from the Country List after the date the Employee begins employment with the Federal Reserve System, the Employee's access to Class II FOMC information will not be affected by the change in the Country List. Similarly, the Employee would continue to be eligible for access to Class I information and may be granted such access if he or she meets the remaining conditions outlined above for employees from a country on the Country List.

(ii) *Access by a Non-Citizen from a country not on the Country List.* An Employee, other than a Protected Individual, who, on the date the Employee begins employment with the Federal Reserve System, is a Non-Citizen from a country that is not on the Country List: (A) Shall not be granted access to Class I FOMC Information, and (B) shall be granted access to Class II FOMC Information only upon the recommendation of the Employee's Division Director after six years of residence in the United States, at least two of which include satisfactory employment by the Board and/or one or more of the Federal Reserve Banks, and a background investigation acceptable to the Board.

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

(4) *Confidential Supervisory Information.* Access to Confidential

Supervisory Information is limited to Protected Individuals with a need to know employed by the Board or by a Federal Reserve Bank.

By order of the Board of Governors of the Federal Reserve System.

Dated: November 2, 2005.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. 05-22223 Filed 11-7-05; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-21975; Directorate Identifier 2005-NM-122-AD; Amendment 39-14365; AD 2005-23-07]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 727 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This AD requires revising the Limitations section of the airplane flight manual to prohibit resetting a tripped circuit breaker for a fuel pump. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump, which could allow an electrical fault to override the protective features of the circuit breaker, and could result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

**DATES:** This AD becomes effective December 13, 2005.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6501; fax (425) 917-6590.

## SUPPLEMENTARY INFORMATION:

### Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 727 airplanes. That NPRM was published in the **Federal Register** on July 29, 2005 (70 FR 43802). That NPRM proposed to require revising the Limitations section of the airplane flight manual to prohibit resetting a tripped circuit breaker for a fuel pump.

### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received. The commenter supports the NPRM.

### Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

### Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Costs of Compliance

There are about 600 airplanes of the affected design in the worldwide fleet. This AD affects about 300 airplanes of U.S. registry. The action in this AD takes 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 AD for U.S. operators is \$19,500, or \$65 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) 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 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.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2005-23-07 Boeing:** Amendment 39-14365. Docket No. FAA-2005-21975; Directorate Identifier 2005-NM-122-AD.

#### Effective Date

(a) This AD becomes effective December 13, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727-100, 727-100C, 727-200, and 727-200F series airplanes; certificated in any category.

#### Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump, which could allow an electrical fault to override the protective features of the circuit breaker, and could result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

#### 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.

#### Revise the Airplane Flight Manual (AFM)

(f) Within 30 days after the effective date of this AD, revise the Limitations section of the Boeing 727 AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"Do not reset a tripped fuel pump circuit breaker."

**Note 1:** When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

#### Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, 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.

#### Material Incorporated by Reference

(h) None.

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

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-22214 Filed 11-7-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE INTERIOR

### Office of Insular Affairs

#### 15 CFR Part 303

[Docket No. 050613157-5219-02]

RIN 0625-AA68

### Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs

**AGENCIES:** Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** The Departments of Commerce and the Interior (the Departments) amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends the regulations by making technical changes required by passage of the Miscellaneous Trade and Technical Corrections Act of 2004; extending the duty refund benefits to include the value of usual and customary health insurance, life insurance and pension benefits; raising the ceiling on the amount of jewelry that qualifies for the duty refund benefit; allowing new insular jewelry producers to assemble jewelry and have such jewelry treated as an article of the insular possessions for up to 18 months after the jewelry company commences assembly operations; allowing duty refund certificate holders to secure a duty refund on any articles that are imported into the customs territory of the United States by the certificate holder duty paid; providing a more comprehensive definition of "unit;" adjusting the amount of watch repairs that are eligible for the duty refund; providing compensation to insular watch producers if tariffs on watches and watch movements are reduced; and clarifying which wages are eligible for purposes of determining the duty refund and identifying which records are needed for the audit.

**DATES:** This rule is effective December 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 482-3526.

**SUPPLEMENTARY INFORMATION:** The Departments of Commerce and the Interior (the Departments) issue this rule to amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The background information and purpose of this rule is found in the preamble to the proposed rule (70 FR 38828, July 6, 2005) and is not repeated here.

#### Amendments

Section 1562 of Public Law 108-429 (2004) amends Public Law 97-446, Public Law 103-465 and Public Law 106-36. The rule makes the necessary technical changes to reflect the new authority for the insular watch and jewelry programs. Changes are made to Authority, 15 CFR Sections 303.1(a), 303.2(a)(1), 303.12 (c)(2), 303.15(a), and 303.16(a)(1).

Pursuant to Public Law 108-429, the definition of "creditable wages" is changed by amending 15 CFR 303.2(a)(13) and 15 CFR 303.16(a)(9) to include the value of usual and customary health insurance, life insurance and pension benefits. The rule also changes the definition of creditable wages to include the difference between the duty rates for watches and watch movements that were in effect on January 1, 2001 and any new lower duty rates that takes place in the future. This provision in Public Law 108-429 is only applicable if there were duty reductions on watches and watch movements. We further reapportion the percentage of watch and watch movement repair wages that are creditable towards the duty-refund. The rule raises the percentage of repairs that are eligible for benefits in response to a request we received which pointed out that repair work is very labor intensive and more time consuming than regular watch assembly.

In an effort to further clarify which wages are eligible for the duty refund, we added a new Section 303.2(a)(14); redesignated the current Sections 303.2(a)(14) through (a)(16) as Sections 303.2(a)(15) through (a)(17), respectively; added a new Section 303.16(a)(10); and redesignated current Sections 303.16(a)(10) and 303.16(a)(11) as Sections 303.16(a)(11) and § 303.16(a)(12), respectively, to further clarify which wages are not creditable. We also, as requested by a producer,

clarified the term "year" in current Sections 303.2(a)(16) and 303.16(a)(11) to clear up any possible confusion.

We also amended §§ 303.2(b)(4), 303.2(b)(5), 303.12(c)(1), 303.16(b)(2), 303.16(b)(3), and 303.19(c)(1). Pursuant to Public Law 108-429, we are changing the regulations to allow the refund of duties on any articles that are imported into the customs territory of the United States duty paid by the certificate holder unless the articles contain a material to which column 2 rates of duty apply.

Further, the rule amends Sections 303.20(b)(ii),(b)(iii) and (b)(iv) by raising the ceiling on the number of duty-free units of jewelry entering the United States each year that qualify for duty refund benefits under the program. Pursuant to Public Law 108-429, the rule changes the maximum number of units a year to qualify for the duty refund benefit from 750,000 units to 10,000,000 units as long as the limit on available program funds is not exceeded and all the units are entered free of duty in accordance with the regulations.

Another change, pursuant to Public Law 108-429, amends Section 303.20(a)(2) to allow new program jewelry producers up to an 18 month exemption from meeting the substantial transformation requirements and the other provisions normally required for duty-free entry into the United States. Starting on the day the new producer commences jewelry manufacturing or jewelry assembly, the jewelry producer has up to 18 months for any article of jewelry provided for in heading 7113, HTSUS, that is assembled in an insular possession, to be treated as a product of the insular possession.

The rule also amends Section 303.16(a)(7) by expanding the definition of a "unit" of jewelry so that the term unit more accurately represents the way some heading 7113, HTSUS, jewelry is sold in the industry.

The rule further amends Sections 303.5(b)(5) and 303.17(b)(4) to clarify that all records pertaining to shipment documents and proof of residency, as required, must be maintained and made available for the verification of data. The provision also adds new Sections 303.5(b)(8) and 303.17(b)(9) which require the collection and maintenance of information pertaining to health insurance, life insurance and pension benefits for each employee in order that the benefit information can be verified and the duty refunds, based on the verified data, be issued in accordance with Public Law 108-429. Further, in accordance with Public Law 108-429, the rule adds a new Section 303.5(b)(9) in the event that the HTSUS tariffs on

watches and watch movements are reduced.

ITA received two comments in response to the proposed rule and request for comments. Both commenters supported all the provisions that were proposed and as a result we are adopting the proposed regulations in this final rule.

#### Administrative Law Requirements

**Regulatory Flexibility Act.** In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule on small entities. As a result, a final regulatory flexibility analysis is not required and has not been prepared.

**Paperwork Reduction Act.** This rulemaking contains revised collection of information requirements that have been approved by the Office of Management and Budget (OMB) under control number 0625-0040. Send comments regarding the burden estimate or any other aspect of the collection of information to U.S. Department of Commerce, ITA Information Officer, Washington, DC 20230 and the Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Attn: OMB Desk Officer), or e-mail [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

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 the collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866. It has been determined that this rulemaking is not significant for purposes of Executive Order 12866.

#### List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

■ For reasons set forth above, the Departments amend 15 CFR part 303 as follows:

## PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAMS

■ 1. The authority citation for 15 CFR part 303 is revised to read as follows:

**Authority:** Pub. L. 97-446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103-465, 108 Stat. 4991; Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106-36, 113 Stat. 167; Pub. L. 108-429, 118 Stat. 2582.

### § 303.1 [Amended]

■ 2. The first sentence of § 303.1(a) is amended by removing “and amended by Public Law 103-465, enacted 8 December 1994.” and adding “amended by Public Law 103-465, enacted 8 December 1994 and amended by Public Law 108-429 enacted 3 December 2004.” in its place.

■ 3. Section 303.2 is amended as follows:

■ A. Section 303.2(a)(1) is amended by removing “.” at the end of the sentence and adding “, Public Law 108-429, enacted on 3 December 2004, 118 Stat. 2582.” in its place.

■ B. Section 303.2(a)(13) is revised as set forth below.

■ C. In Section 303.2, paragraphs (a)(14) through (a)(16) are redesignated as paragraphs (a)(15) through (a)(17), and a new paragraph (a)(14) is added as set forth below.

■ D. Newly designated paragraph (a)(17) is amended by removing “(i.e., be physically present for at least 183 days per year)” and adding “(i.e., be physically present for at least 183 days within a continuous 365 day period)” in its place.

■ E. The heading and the first sentences of paragraph (b)(4) are revised as set forth below.

■ F. Paragraph (b)(5) heading is revised as set forth below.

### § 303.2 Definitions and forms.

(a) \* \* \*

(13) Creditable wages, creditable fringe benefits and creditable duty differentials eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches up to an amount equal to 85 percent of the firm's total creditable wages.

(B) Wages paid to watch and watch movement assembly workers involved

in the complete assembly of watches and watch movements which have entered the United States duty-free and have complied with the laws and regulations governing the program.

(C) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches, excluding the movement, only in situations where the desired movement can not be purchased unassembled and the producer has documentation establishing this.

(D) Wages paid to those persons engaged in the day-to-day assembly operations on the premises of the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(F) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations, along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 100 percent of the “weighted average” yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the “weighted average” of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 for each employee.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 120 percent of the “weighted

average” yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the “weighted average” of all family health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 for each employee.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(13)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage.

(iii) If tariffs on watches and watch movements are reduced, then companies would be required to provide the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein: the quantity and value of watch cases, the quantity of movements, the quantity and value of each type of strap, bracelet or band, and the quantity and value of batteries shipped free of duty into the United States. If discrete watch movements are shipped free of duty into the United States, then the annual aggregate quantity by individual HTSUS movement tariff numbers would also be required along with the value of each battery if it is contained within. These data would be used to calculate the annual duty rate before each HTSUS tariff reduction, and the annual duty rate after the HTSUS tariff reduction. The amount of the difference would be creditable toward the duty refund. The tariff information would only be collected and used in the calculation of the annual duty-refund certificate and would not be used in the calculation of the mid-year duty-refund.

(14) Non-creditable wages and non-creditable fringe benefits. Wages ineligible for the duty refund benefit wages include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches in an amount over 85 percent of the firm's total creditable wages.

(B) Wages paid for the assembly of watches and watch movements which are shipped outside the customs territory of the United States; wages paid for the assembly of watches and watch movements that do not meet the regulatory assembly requirements; or wages paid for the assembly of watches or watch movements that contain HTSUS column 2 components.

(C) Wages paid for the complete assembly of watches, excluding the movement, when the desired movement can be purchased unassembled, if the producer does not have adequate documentation, demonstrating to the satisfaction of the Secretaries, that the movement could not be purchased unassembled whether or not it is entering the United States.

(D) Wages paid to persons not engaged in the day-to-day assembly operations on the premises of the company office; wages paid to any outside consultants; wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers, and accountants; wages paid to employees not working on the premises of the company office; and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 100 percent of the "weighted average" yearly individual health insurance costs for all federal employees. The cost of any life insurance over the \$50,000 limit for each employee.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 120 percent of the "weighted average" yearly family health insurance costs for all federal employee. The cost of any life insurance over the \$50,000 limit for each employee.

(B) The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum creditable wage allowed under the program (see paragraph (a)(13)(i) of this

section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

\* \* \* \* \*

(b) \* \* \*

(4) ITA-360P "Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid." This document authorizes an insular watch producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, up to the specified value of the certificate. \* \* \*

(5) ITA-361P "Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid." \* \* \*

\* \* \* \* \*

■ 4. Section 303.5(b)(5) is revised to read as set forth below and paragraph(b)(8) and (b)(9) are added to read as set forth below.

**§ 303.5 Application for annual allocation of duty-exemptions.**

\* \* \* \* \*

(b) \* \* \*

(5) Customs, bank, payroll, production records, and all shipping records including the importer of record number and proof of residency, as requested;

\* \* \* \* \*

(8) All records pertaining to health insurance, life insurance and pension benefits for each employee; and

(9) If HTSUS tariffs on watches and watch movements are reduced, records of the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein would be required: the quantity and value of watch cases; the quantity of movements; the quantity and value of each type of strap, bracelet or band; and the quantity and value of batteries shipped free of duty into the United States. In addition, if applicable, records of the annual aggregate quantity of discrete watch movements shipped free of duty into the United States by HTSUS tariff number.

\* \* \* \* \*

■ 5. Section 303.12(c)(1) and (c)(2) are revised to read as follows:

**§ 303.12 Issuance and use of production incentive certificates.**

\* \* \* \* \*

(c) The use and transfer of certificate of entitlements. (1) Insular producers

issued a certificate may request a refund by executing Form ITA-361P (see § 303.2(b)(5) and the instructions on the form). After authentication by the Department of Commerce, Form ITA-361P may be used to obtain duty refunds on articles that entered the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under Public Law 97-446, as amended by Public Law 103-465 and Public Law 108-429. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they shall cancel the affected certificate.

\* \* \* \* \*

**§ 303.15 [Amended]**

■ 6. Section 303.15(a) is amended by removing "." at the end of the sentence and adding ", and Public Law 108-429, enacted on 3 December 2004." in its place.

■ 7. Section 303.16 is amended as follows:

■ A. Paragraph (a)(1) is amended by removing "." at the end of the last sentence and adding ", and Public Law 108-429, enacted on 3 December 2004." in its place.

■ B. Paragraph (a)(7) is revised to read as set forth below.

■ C. Paragraph (a)(9) is revised to read as set forth below.

■ D. Paragraphs (a)(10) and (a)(11) are redesignated as paragraphs (a)(11) and (12) and a new paragraph (a)(10) is added as set forth below.

■ E. Newly designated paragraph (a)(12) is amended by removing "(i.e., be physically present for at least 183 days per year)" and adding "(i.e., be physically present for at least 183 days within a continuous 365 day period year)" in its place.

■ F. Paragraph (b)(2) is revised to read as set forth below.

■ G. The heading of paragraph (b)(3) is revised to read as set forth below.

**§ 303.16 Definitions and forms.**

(a) \* \* \*

(7) Unit of Jewelry means a single article (e.g., ring, bracelet, necklace), pair (e.g, cufflinks), gram for links which are sold in grams and stocked in grams, and other subassemblies and components in the customary unit of measure they are stocked and sold within the industry.

\* \* \* \* \*

(9) Creditable wages and creditable fringe benefits eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the Bureau of Customs and Border Protection's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages.

(A) Wages paid to persons engaged in the day-to-day assembly operations at the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security operations employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(B) Wages paid to permanent residents who are employees of a new company involved in the jewelry assembly and jewelry manufacturing of HTSUS heading 7113 jewelry for up to 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(C) Wages paid when a maximum of two producers work on a single piece of HTSUS heading 7113 jewelry which entered the United States free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the customs territory of the United States, and the producers maintained

production and payroll records sufficient for the Departments' verification of the creditable wage portion (see § 303.17(b)).

(D) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(E) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 100 percent of the "weighted average" yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the "weighted average" of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 for each employee.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 120 percent of the "weighted average" yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the "weighted average" of all family health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 dollars for each employee.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). An employee earning more

than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage.

(10) Non-creditable wages and non-creditable fringe benefits. Wages ineligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 heading 7113, HTSUS, jewelry program.

(A) Wages paid for the repair of jewelry in an amount over 50 percent of the firm's total creditable wages.

(B) Wages paid to employees who are involved in assembling HTSUS heading 7113 jewelry beyond 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions if the jewelry does not meet the Bureau of Customs and Border Protection's substantial transformation requirements and other criteria for duty-free entry into the United States.

(C) Wages paid for the assembly and manufacturing of jewelry which is shipped to places outside the customs territory of the United States; wages paid for the assembly and manufacturing of jewelry that does not meet the regulatory assembly requirements; or wages paid for the assembly and manufacture of jewelry that contain HTSUS column 2 components.

(D) Wages paid to those persons not engaged in the day-to-day assembly operations on the premises of the company office, wages paid to any outside consultants, wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers and accountants; wages paid to employees not working on the premises of the company office and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 100 percent of the "weighted average" yearly individual health insurance costs

for all federal employees. The cost of any life insurance over the \$50,000 limit for each employee.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 120 percent of the "weighted average" yearly family health insurance costs for all federal employee. The cost of any life insurance over the \$50,000 limit for each employee.

(B) The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

\* \* \* \* \*

(b) \* \* \*

(2) ITA-360P "Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid." This document authorizes an insular jewelry producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, with certain exceptions, up to the specified value of the certificate. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA-361P.

(3) ITA-361P "Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid." \* \* \*

\* \* \* \* \*

■ 8. Section 303.17 is amended by revising paragraph (b)(6); by redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9); and by adding a new paragraph (b)(7) to read as follows:

**§ 303.17 Annual jewelry application.**

\* \* \* \* \*

(b) \* \* \*

(6) Customs, bank, payroll, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(7) All records pertaining to health insurance, life insurance and pension benefits for each employee;

\* \* \* \* \*

■ 9. Section 303.19(c)(1) is revised to read as follows:

**§ 303.19 Issuance and use of production incentive certificates.**

\* \* \* \* \*

(C) The use and transfer of certificate entitlements. (1) Insular producers issued a certificate may request a refund by executing Form ITA-361P (see § 303.16(b)(3)) and the instruction on the form). After authentication by the Department of Commerce, Form ITA-361P may be used to obtain duty refunds on article that entered the customs territory of the United States duty paid. Duties on an article which is the product of a country with respect to column 2 rates of duty apply may not be refunded Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

\* \* \* \* \*

■ 10. In § 303.20:

■ A. Paragraph (a)(2) is revised;

■ B. Paragraph (b)(1)(ii) is amended by removing "450,000" and adding "3,533,334" in its place;

■ C. Paragraph (b)(1)(iii) is amended by removing "600,000" and adding "6,766,667" in its place; and

■ D. Paragraph 303.20(b)(1)(iv) is amended by removing "750,000" and adding "10,000,000" in its place.

**§ 303.20 Duty refund.**

\* \* \* \* \*

(a) \* \* \*

(2) Eighteen month exemption. Any article of jewelry provided for in HTSUS heading 7113, assembled in the insular possessions by a new entrant jewelry manufacturer shall be treated as a product of the insular possessions if such article is entered into the customs territory of the United States no later than 18 months after such producer commences jewelry manufacturing or

jewelry assembly operations in the insular possessions.

\* \* \* \* \*

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao I. Pula,

Director for Insular Affairs, Department of the Interior.

[FR Doc. 05-22244 Filed 11-7-05; 8:45 am]

BILLING CODE 3510-DS-P; 4310-93-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Chapter I**

[Docket No. 2005N-0419]

**Change of Name; Technical Amendment**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the name for AOAC INTERNATIONAL. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

**DATES:** This rule is effective November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Joyce Strong, Office of Policy and Planning (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7010.

**SUPPLEMENTARY INFORMATION:** This document amends FDA's regulations to reflect the name change of AOAC INTERNATIONAL by removing the outdated name wherever it appears and by adding the new name in its place in 21 CFR parts 2, 10, 101, 102, 106, 114, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 156, 160, 161, 163, 164, 166, 168, 169, 172, 173, 176, 177, 178, 184, 189, 211, 226, 520, and 573.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

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

**Chapter I [Nomenclature changes]**

■ 1. Parts 2, 10, 101, 102, 106, 114, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 156, 160, 161, 163, 164, 166, 168, 169, 172, 173, 176, 177, 178, 184,

189, 211, 226, 520, and 573 are amended by removing the phrase “Association of Official Analytical Chemists International” and adding in its place “AOAC INTERNATIONAL” wherever it appears.

Dated: November 1, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05-22167 Filed 11-7-05; 8:45 am]

**BILLING CODE 4160-01-S**

# Proposed Rules

Federal Register

Vol. 70, No. 215

Tuesday, November 8, 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 HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 874

[Docket No. 2005N-0346]

#### Ear, Nose, and Throat Devices; Tinnitus Masker; Designation of Special Controls

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the classification regulations of tinnitus masker devices in order to specify a special control for the device. The agency is taking this action on its own initiative. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document that the agency proposes to use as a special control for the device.

**DATES:** Submit written or electronic comments on the proposed rule by February 6, 2006. See section XI of this document for the proposed effective date of a final rule based on this document.

**ADDRESSES:** You may submit comments, identified by Docket No. 2005N-0346, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following ways:

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

#### Written Submissions

Submit written submissions in the following ways:

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

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

**Instructions:** All submissions received must include the agency name and docket number or regulatory information number for this rulemaking. All comments received may be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

**FOR FURTHER INFORMATION CONTACT:** Teresa Cygnarowicz, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2980.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Authorities

The act (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94-295), SMDA (Public Law 101-629), FDAMA (Public Law 105-115), and the Medical Device User Fee and Modernization Act (Public Law 107-250), established a comprehensive system for the regulation of medical devices intended for human

use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, defined by the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as preamendments devices. FDA classifies these devices after it takes the following steps: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III until FDA does the following: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a legally marketed device that has been classified into class I or class II. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Under the 1976 amendments, class II devices were defined as devices for which there was insufficient information to show that general controls themselves would provide reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which the general

controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

## II. Regulatory History of the Devices

In the *Federal Register* of March 31, 2000 (65 FR 17138), FDA issued a final rule reclassifying 28 preamendments devices from class III (premarket approval) into class II (special controls). FDA also identified a summary of FDA guidance special controls that the agency believes will reasonably ensure the safety and effectiveness of the devices. For the tinnitus masker device (TMD), FDA identified labeling as the special control.

## III. Proposed Rule

FDA is proposing to amend the reclassification regulation of TMDs in order to designate a special control for these devices. FDA has now developed a guidance document for the device and, under the SMDA provisions, is proposing to designate the special controls that, in addition to general controls, the agency believes will reasonably assure the safety and effectiveness of these devices. FDA is identifying the guidance document entitled "Class II Special Controls Guidance Document: Tinnitus Masker Devices" as the proposed special control.

Following the effective date of a final rule based on this proposed rule, any firm submitting a premarket notification (510(k)) for a new TMD will need to address the issues covered in the special control guidance. However, the firm needs only to show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

## IV. Risks to Health

FDA has identified the following risks to health associated with the device in the "Class II Special Controls Guidance Document: Tinnitus Masker Devices." The first column in table 1 of this document shows the identified risks.

TABLE 1.—RISKS TO HEALTH AND RECOMMENDED MITIGATION MEASURES

Risks to Health	Recommended Mitigation Measures
Side effects, including worsening tinnitus	Section 8. Clinical Testing Section 9. Labeling
Change in hearing	Section 7. Pre-clinical Testing Section 8. Clinical Testing Section 9. Labeling
Adverse tissue reaction	Section 7. Pre-clinical Testing
Electrical hazards	Section 7. Pre-clinical Testing
Tissue heating or cavitation (ultrasound TMDs only)	Section 7. Pre-clinical Testing
Improper use	Section 9. Labeling

## V. Special Controls

FDA believes that, in addition to general controls, the class II special controls guidance document entitled "Class II Special Controls Guidance Document: Tinnitus Masker Devices" are adequate controls to address the risks to health described in section IV of this document. The class II special controls guidance document provides information on how to control the risks to health of device side effects, including worsening tinnitus, change in hearing, adverse tissue reaction, electrical hazards, tissue heating or cavitation (ultrasound TMDs only), and improper use. The draft guidance document contains specific recommendations with regard to device performance testing and other information in a 510(k) submission. In table 1 of this document, FDA has identified the risks to health associated with the use of the device in the first column and the recommended mitigation measures identified in the class II special controls guidance document in the second column. These recommendations will also help ensure that the device has appropriate performance characteristics and labeling for its use.

Following the effective date of a final rule based on this proposed rule, any firm submitting a 510(k) for a TMD will need to address the issues covered in

the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

## VI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The purpose of this proposed rule is to designate a special control for these devices. FDA has designated guidance documents as the special controls. FDA believes that manufacturers, including small manufacturers, are already substantially in compliance with the recommendations in the guidance documents and they will not add substantially to the information manufacturers presently submit. FDA, therefore, believes that the rule will impose no significant economic impact on any small entities. The agency, therefore certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement or

analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

### VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

### IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also tentatively concludes that the special controls guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the draft guidance document entitled “Class II Special Controls Guidance Document: Tinnitus Masker Devices.”

### X. Comments

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

### XI. Proposed Implementation Plan

FDA proposes that any final regulation that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**. Following the effective date of a final rule exempting the device, manufacturers of TMDs will need to address the issues covered in this

special controls guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

### List of Subjects in 21 CFR Part 874

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 874 be amended as follows:

### PART 874—EAR, NOSE, AND THROAT DEVICES

■ 1. The authority citation for 21 CFR part 874 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 874.1 is amended by revising paragraph (e) to read as follows:

#### § 874.1 Scope.

\* \* \* \* \*

(e) Guidance documents in this part may be obtained on the Internet at <http://www.fda.gov/cdrh/guidance.html>.

■ 3. Section 874.3400 is amended by revising paragraph (b) to read as follows:

#### § 874.3400 Tinnitus masker.

\* \* \* \* \*

(b) *Classification.* Class II (special controls). The special control for these devices is FDA’s “Class II Special Controls Guidance Document: Tinnitus Masker Devices.”

Dated: October 7, 2005.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 05–22269 Filed 11–7–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV–108–FOR]

#### West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West

Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposes to revise its Code of State Regulations (CSR) concerning surety bonds. The amendment is intended to provide the State with an alternative source of reliable financial information about the surety, and to allow sureties that are licensed and in good financial condition but are not currently listed with the U.S. Department of the Treasury as an acceptable surety of Federal bonds to provide surety bonds to the coal industry in West Virginia. The proposed amendment was authorized by the West Virginia Secretary of State as an emergency rule under the State’s Administrative Procedures Act.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on December 8, 2005. If requested, we will hold a public hearing on the amendment on December 5, 2005. We will accept requests to speak at a hearing until 4 p.m. (local time), on November 23, 2005.

**ADDRESSES:** You may submit comments, identified by WV–108–FOR, by any of the following methods:

- E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov). Include WV–108–FOR in the subject line of the message;
- Mail/Hand Delivery: Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301; or
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Docket:** You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of

Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347-7158. E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov).

West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, WV 25304, Telephone: (304) 926-0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291-4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347-7158. Internet: [chfo@osmre.gov](mailto:chfo@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the West Virginia Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia’s program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

**II. Description of the Proposed Amendment**

By letter dated October 17, 2005 (Administrative Record Number WV-

1441), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of a proposed revision to CSR 38-2-11.3.a.3 concerning surety bonds, a briefing document, an emergency rule justification, which includes an affidavit that was submitted in support of the emergency rule package, and a decision by the Secretary of State dated October 11, 2005, approving the emergency rule.

In its submittal of this amendment, the WVDEP stated that its current rule at CSR 38-2-11.3.a.3 requires that after July 1, 2001, a surety must be recognized by the Treasurer of the State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal bonds (otherwise referred to as being “T-Listed”). The WVDEP stated that the original standard was adopted to address concerns about the financial solvency of sureties providing reclamation bonds in West Virginia. The WVDEP did not have the necessary resources or expertise to regularly and timely monitor the financial condition of sureties doing business in West Virginia. However, a surety that is T-Listed is required to provide, on a regular basis, financial information to the U.S. Department of Treasury, which reviews this information and provides its findings to state regulatory agencies. While this information provided by the Department of Treasury has been helpful, WVDEP stated, this restriction has prevented sureties that are not T-Listed, and that are otherwise in good financial condition, from providing reclamation bonds in West Virginia. The WVDEP stated that this, along with other reasons, has adversely impacted the market for reclamation bonds in West Virginia. Further, WVDEP stated, since a surety must have at least two years experience providing surety bonds before it can be T-Listed, a new insurance company or an existing insurance company that has not previously issued surety bonds cannot offer surety bonds in West Virginia.

The WVDEP stated that the proposed amendment to CSR 38-2-11.3.a.3 not only addresses the concerns noted above by providing an alternative source of reliable financial information about the surety, but it also allows sureties that are licensed and in good financial condition but are not T-Listed to provide surety bonds in West Virginia.

The WVDEP stated that an “emergency” exists under the State’s Administrative Procedures Act because there is presently a great demand for reclamation bonds from the coal

industry in West Virginia that is not being met by the limited number of sureties currently offering surety bonds in West Virginia. As a result, alternative more expensive means are being used by coal companies to comply with the State’s bonding requirements. Among other things, this has greatly restricted the availability of capital for the development of new coal mines and the creation of new jobs. The State acknowledges that at a time when coal is so important to West Virginia’s economy, this dearth of surety bonds is having a significant negative impact on West Virginia’s coal industry. The proposed amendment to 38 CSR 2 is thus necessary “to prevent substantial harm to the public interest.”

Specifically, West Virginia proposes the following amendment.

*CSR 38-2-11.3.a.3 Surety*

The existing rule currently provides that surety received after July 1, 2001, must be recognized by the treasurer of the state as holding a current certificate of authority from the U.S. Department of the Treasury as an acceptable surety on Federal bonds. This provision is proposed to be amended by adding new language at the end of the existing requirement. As amended, CSR 38-2-11.3.a.3 provides as follows:

11.3.a.3. Surety received after July 1, 2001 must: (i) Be recognized by the treasurer of state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds; Or (ii) submit to the Secretary proof that the surety holds a valid license issued by the basis a certificate of good standing or other evidence demonstrating that the surety remains licensed or otherwise in good standing with the West Virginia Insurance Commissioner and the insurance regulator of its domiciliary state and within four (4) years take all steps necessary to obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

The WVDEP filed the emergency rule with the West Virginia Secretary of State on September 21, 2005. The Secretary of State approved the rule on an emergency basis pursuant to W. Va. Code 29A-3-15a on October 11, 2005.

The WVDEP also filed a legislative rule containing the same language with the Secretary of State on September 21, 2005 (Administrative Record Number WV-1442). At the same time, the State announced a public comment period on the legislative rule. The public comment period commenced on September 21, 2005, and closed on October 27, 2005. A public hearing was held at the WVDEP office in Kanawha City prior to the close of the comment period.

On October 3, 2005, WVDEP provided OSM a copy of the proposed rule for informal review. Unlike the State's existing surety bond provisions at CSR 38-2-11.3.a.1 and the Federal surety bond requirements at 30 CFR 800.20(a), OSM notified the State that the proposed revision at CSR 38-2-11.3.a.3 did not appear to require the surety to be licensed to do business in the State. To resolve this concern and to make additional clarifications without altering the purpose or intent of either the emergency or the legislative rule, on October 14, 2005 (Administrative Record Number WV-1443) OSM recommended that the language in both rules be revised as follows:

11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must: (i) be recognized by the treasurer of the state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds by being included on the Treasury Department's listing of approved sureties (Department Circular 570); or (ii) submit proof to the Secretary that it holds a valid license issued by the West Virginia Insurance Commissioner, and agree to submit to the Secretary on at least a quarterly basis a certificate of good standing from the West Virginia Insurance Commissioner and such other evidence from the insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also in good standing in that state. Companies not included on the United States Treasury Department's listing of approved sureties must diligently pursue application for listing, submit evidence on a semi-annual basis demonstrating that they are pursuing such listing, and within four (4) years, obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

State officials agreed that while the recommended technical revisions offered by OSM were better and further clarified the intent of their initial rule, they needed to wait until after the close of their comment period before making any changes to the rule. The WVDEP intends to submit these changes and any additional revisions to OSM after the close of the State's comment period on October 27, 2005. This provision is expected to be in the form of both an emergency and a legislative rule. If the revised rules contain language identical to the language recommended by OSM and included herein, that revision will be acted upon by OSM in this rulemaking. If substantive changes beyond or other than those recommended by OSM are included in the revised rules, we may need to reopen the comment period.

The legislative rule will be submitted to the Legislative Rulemaking Review Committee after the close of the

comment period, and it is to be acted upon by the West Virginia Legislature during the upcoming 2005-2006 regular legislative session. If that rule is adopted with the identical language recommended by OSM as described above, no further action will be required by OSM, and it will become part of West Virginia's permanent regulatory program upon submission by the State.

Given that an emergency situation exists in West Virginia with regard to surety bonds and to avoid any unnecessary delays in approving the proposed State rule, OSM is requesting comments on both the proposed State rule and the suggested revisions to that rule as described above. Any changes adopted by the State after the close of its public comment period will result in the revision to both its emergency and legislative rules. As mentioned above, any substantive changes in the proposed State rules that go beyond those described herein will be subject to further rulemaking.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions they will become part of the West Virginia program.

#### Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS NO. WV-108-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347-7158.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on November 23, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

#### IV. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with”

regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a

significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (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. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

##### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 21, 2005.

##### **Brent Wahlquist,**

*Regional Director, Appalachian Region.*

[FR Doc. 05–22194 Filed 11–7–05; 8:45 am]

**BILLING CODE 4310–05–P**

# Notices

Federal Register

Vol. 70, No. 215

Tuesday, November 8, 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

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of petitions for trade adjustment assistance (TAA) that was filed by shrimp producers in Alabama, Arizona, Georgia, North Carolina, South Carolina, and Texas. Shrimp producers in these states are no longer eligible for TAA benefits in fiscal year 2006.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined that U.S. imports of shrimp fell by 7.9 million pounds between 2003 and 2004, a decline of 0.9 percent. Therefore, imports were no longer a contributing factor for program eligibility. An increase in imports is required for re-certifying a petition for TAA.

**FOR FURTHER INFORMATION, CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: October 20, 2005.

**W. Kirk Miller,**

*Administrator, Foreign Agricultural Service.*  
[FR Doc. 05-22228 Filed 11-7-05; 8:45 am]

**BILLING CODE 3410-10-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Mendocino Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Mendocino County Resource Advisory Committee (RAC) will meet November 18, 2005, in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees, (4) discussion—items of interest (a) historical aspects of Beaver Glade; budget update, (5) Discussion/approval of projects, (6) next agenda items and meeting date.

**DATES:** The meeting will be held on November 18, 2005, from 9 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

**FOR FURTHER INFORMATION CONTACT:** Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983-8503; E-mail: [rhurt@fs.fed.us](mailto:rhurt@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by November 12, 2005. Public will have the opportunity to address the committee at the meeting.

Dated: November 1, 2005.

**Blaine Baker,**

*Designated Federal Official.*

[FR Doc. 05-22197 Filed 11-7-05; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of Intent To Extend a Currently Approved Information Collection

**AGENCY:** Natural Resources Conservation Service (NRCS), USDA.

**ACTION:** Notice; correction.

**SUMMARY:** The Natural Resources Conservation Service published in the *Federal Register* notice of October 12, 2005 (70 FR 59314), a document stating "Notice to Reinstate and Revise a Previously Approved Information Collection." This notice corrects the previously published document. In accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Natural Resources Conservation Service (NRCS) to request an extension for and a revision to the currently approved information collection Volunteer Program-Earth Team. The collected information will help NRCS to match the skills of individuals who are applying for volunteer work that will further the Agency's mission. Information will be collected from potential volunteers who are 14 years of age or older.

**DATES:** Comments on this notice must be received within 60 days after publication in the *Federal Register* to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Michele Eginore, National Earth Team Office, Natural Resources Conservation Service, Suite C, 5140 Park Avenue, Des Moines, Iowa 50321; telephone: (515) 289-0325, extension 102; fax: (515) 289-4561; e-mail: [Michele.Eginore@ia.usda.gov](mailto:Michele.Eginore@ia.usda.gov).

**SUPPLEMENTARY INFORMATION:** Collection of this information is necessary to document the service of volunteers as required by Federal Personnel Manual Supplement 296-33, Subchapter 3. Agencies are authorized to recruit, train, and accept, with regard to civil service classification laws, rules or regulations, the services of individuals to serve without compensation. Volunteers may assist in any Agency program/project and may perform any activities which Agency employees are allowed to conduct. Volunteers must be at least 14 years of age. Persons interested in volunteering will have to write, call, e-mail, visit an NRCS office, or visit the E-Gov Web site to complete and submit the forms.

*Description of Information Collection:* NRCS-PER-001, Volunteer Application, and the NRCS-PER-003, Agreement for Sponsored Voluntary Services, are the volunteer application forms. After one of these forms is signed by the volunteer group leader and the NRCS representative, the individual or group is enrolled in the NRCS volunteer program. The forms provide contact information for the volunteer, emergency contact information, and a job description. This form is placed in a volunteer "case file" and will be destroyed 3 years after the volunteer has completed service. In the event that the volunteer is injured, the "case file" will

be transferred to an Official Personnel Folder (OPF). NRCS-PER-002, Volunteer Interest and Placement Summary, is an optional form that assists the volunteer supervisor in placing the volunteer in a position that will benefit the Agency and the volunteer. The aforementioned form is placed in a volunteer "case file" and will be destroyed 3 years after the volunteer has completed service. In the event that the volunteer is injured, the "case file" will be transferred to an OPF. NRCS-PER-004, Time and Attendance, is an optional form that assists the volunteer supervisor in documenting hours worked by the volunteer, and may be used to substantiate a Workers' Compensation Claim. This form is placed in a volunteer "case file" and will be destroyed 3 years after the volunteer has completed service. In the event that the volunteer is injured, the "case file" will be transferred to an OPF.

Signed in Washington, DC on October 27, 2005.

**Bruce I. Knight,**  
Chief.

[FR Doc. 05-22270 Filed 11-7-05; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Environmental Statements; Availability

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) has prepared a Draft Environmental Impact Statement consistent with the National Environmental Policy Act of 1969, as amended, to disclose potential effects to the human environment.

The section of Coal Creek that traverses Cedar City, Utah, has channel stability and capacity deficiencies that pose a threat to existing infrastructure and development due to flooding. The NRCS proposes to modify the Coal Creek channel to safely convey floodwaters from a 100-year flood event. In conjunction with the proposed channel improvements, two irrigation diversion/drop structures on Coal Creek (the Main Street Diversion and the Woodbury Diversion) will have to be reconstructed to eliminate significant channel and capacity restrictions. In conjunction with the reconstruction of the diversion structures, sedimentation facilities would be constructed to remove gravel from water diverted from

the Main Street Diversion. Also as part of this project, Cedar City proposes to improve and expand an existing parkway along Coal Creek to enhance aesthetic values and provide recreational opportunities for community residents and visitors.

The Draft EIS presents detailed analyses for three alternatives. Alternative A—No Action, would continue the frequency and level of dredging and other management actions as they are currently planned. Existing channel and structural deficiencies would not be corrected.

Alternative B—Relocate Main Street Diversion, would remove the Main Street diversion/drop structure currently in use and relocate it to near 200 East. Implementation of this alternative would require approximately 3,250 feet of pipeline to be installed, flood and slope/grading-related channel modifications from Center Street to I-15, and the continuation of periodic dredging as necessary. A sedimentation basin would be constructed to remove gravels from diverted irrigation water. The Woodbury diversion/drop structure would be reconstructed. Under this alternative, the parkway would be extended to Airport Road and landscaped. Parkway Option B1 proposes a crosswalk at the Main Street Bridge. Parkway Option B2 proposes to access existing sidewalks from the pedestrian bridge at 400 North to cross Main Street and avoid additional property acquisition.

Alternative C—Replace Main Street Diversion, would modify the Main Street diversion/drop structure by removing approximately half the drop. Implementation of this alternative would require approximately 3,000 feet of pipeline to be installed, flood and slope/grading-related channel modifications from Center Street to west of I-15, and the continuation of periodic dredging as necessary. Two sedimentation basins would be constructed to remove gravels from diverted irrigation water. The Woodbury diversion/drop structure would be reconstructed. Under this alternative, the parkway would be extended to Airport Road and landscaped. In addition, a historic pedestrian truss bridge would be removed to prevent channel constriction and potential flooding. Parkway Option C1 would construct an elevated pedestrian pathway under the Main Street Bridge. Parkway Option C2 would construct a large box culvert for pedestrian use just north of the bridge and under Main Street.

As required by the NRCS for water projects, the National Economic

Development (NED) benefit-cost process was used to determine benefit-cost ratios for each alternative. The alternative with the highest benefit-cost ratio (3.47:1) and thus designated as the NED Alternative was Alternative C, Parkway Option C1. Accordingly, the NRCS selected Alternative C, Parkway Option C1, as the Preferred Alternative.

Written comments regarding this Draft EIS should be mailed to: Marnie Wilson, Coal Creek EIS, USDA—NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138-1100. Project information is also available on the Internet at: <http://www.ut.nrcs.usda.gov> under Public Notices. Comments must be received no later than 45 days after this notice is published (December 26, 2005).

Comments may also be submitted by sending a facsimile to (801) 524-4593, or by e-mail to [Marnie.Wilson@ut.usda.gov](mailto:Marnie.Wilson@ut.usda.gov) (please include the words "Coal Creek Comment" in the subject line of the E-mail).

**EFFECTIVE DATE:** November 11, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Marnie Wilson, Coal Creek EIS, USDA—NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138-1100. Project information is also available on the Internet at: <http://www.ut.nrcs.usda.gov> under Public Notices.

**SUPPLEMENTARY INFORMATION:** Copies of the Draft EIS are available by request from Marnie Wilson at the address listed above. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Sylvia Gillen, Utah State Conservationist.

Signed in Salt Lake City, Utah on October 28, 2005.

**Sylvia A. Gillen,**

State Conservationist.

[FR Doc. 05-22358 Filed 11-7-05; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

*Title:* Monitoring of Fish Trap Fishing in the Gulf of Mexico.  
*Form Number(s):* None.  
*OMB Approval Number:* 0648-0392.  
*Type of Request:* Regular submission.  
*Burden Hours:* 244.  
*Number of Respondents:* 86.  
*Average Hours Per Response:* 5 minutes.

*Needs and Uses:* Any persons using fish traps to participate in the commercial reef fish fishery in the Gulf of Mexico are required to make telephone reports when initiating and terminating fishing trips. This information is needed to monitor fish trap fishing until the implementation of a vessel monitoring system for this population.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: November 2, 2005.

#### **Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-22182 Filed 11-7-05; 8:45 am]

**BILLING CODE 3510-22-P**

## **DEPARTMENT OF COMMERCE**

### **Submission for OMB Review; Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Pacific Islands Region Coral Reef Ecosystems Logbook and Reporting.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0462.

*Type of Request:* Regular submission.

*Burden Hours:* 382.

*Number of Respondents:* 5.

*Average Hours Per Response:* At-sea notifications, 3 minutes; logbook reports, 30 minutes; and transshipment reports, 15 minutes.

*Needs and Uses:* Logbooks are required for U.S. fishing vessels registered for use (or any U.S. citizen issued) with a Special Coral Reef Ecosystem Fishing Permit authorized under the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region. The information in the mandatory logbooks are used to obtain fish catch/fishing effort data on coral reef management species harvested in designated low-use marine protected areas and on potentially-harvested coral reef management species in certain waters of the U.S. exclusive economic zone in the western Pacific region. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to incidental takes of endangered and threatened marine animals.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: November 2, 2005.

#### **Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-22183 Filed 11-7-05; 8:45 am]

**BILLING CODE 3510-22-P**

## **DEPARTMENT OF COMMERCE**

### **Submission for OMB Review; Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Report of Whaling Operations.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0311.

*Type of Request:* Regular submission.

*Burden Hours:* 48.

*Number of Respondents:* 52.

*Average Hours Per Response:*

Individual reports, 30 minutes; and summary reports, 10 minutes.

*Needs and Uses:* Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). Captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA. The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

*Affected Public:* Individuals or households; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: November 2, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-22184 Filed 11-7-05; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**Submission for OMB Review; Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Pacific Islands Region Coral Reef Ecosystems Permit Form.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0463.

*Type of Request:* Regular submission.

*Burden Hours:* 30.

*Number of Respondents:* 12.

*Average Hours Per Response:*

Applications, 2 hours; and appeals, 3 hours.

*Needs and Uses:* The regulations implementing the Fishery Management Plan (FMP) for Coral Reef Ecosystems of the Western Pacific Region include the establishment of a permit requirement for any U.S. vessel fishing for coral reef management unit species in the designated low-use Marine Protected Areas and open areas, i.e., waters seaward of the inner boundary of the U.S. Exclusive Economic Zone in the western Pacific region. The special permit is also required for at-sea transshipment of coral reef management unit species. The permit application form provides basic information about the permit applicant, vessel, fishing gear and method, target species, projected fishing effort, etc. for use by NOAA Fisheries Service and the Western Pacific Fishery Management Council in determining eligibility for permit issuance. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of FMP management measures.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: November 2, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-22185 Filed 11-7-05; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

[Docket No. 051028278-5278-01]

**Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving "Schedule 1" Chemicals Through Calendar Year 2005**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention has had on commercial activities involving "Schedule 1" chemicals through calendar year 2005. This notice of inquiry is part of an effort to collect information to assist in the preparation of the annual certification required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

**DATES:** Comments are due December 6, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [wfisher@bis.doc.gov](mailto:wfisher@bis.doc.gov).

Include the phrase "Schedule 1 Notice of Inquiry" in the subject line;

- Fax: (202) 482-3355 (Attn: Willard Fisher);

- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division,

14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** For questions on the Chemical Weapons Convention requirements for "Schedule 1" chemicals, contact Marcia Brisson, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (703) 605-4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-2440.

**SUPPLEMENTARY INFORMATION:**

**Background**

In providing its advice and consent to the ratification of the Chemical Weapons Convention (Convention) (S. Res. 75, April 24, 1997), the Senate included several conditions. Condition 9 of Senate Resolution 75, titled "Protection of Advanced Biotechnology," provides that the President shall certify to the Congress on an annual basis that " \* \* the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1 \* \* \*". On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

In the years 2000 through 2004, BIS solicited comments from the public on the commercial impact of the Convention's Schedule 1 limitations and received no comments. In light of this, the President certified to Congress that firms were not significantly harmed by the Convention's Schedule 1 limitations. The Bureau of Industry and Security is collecting data to assist in determining the impact, if any, that the implementation of the Convention's requirements have had on commercial "Schedule 1" activities through calendar year 2005.

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC), is an international arms control treaty that establishes the Organization for the Prohibition of Chemical Weapons

(OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority for liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

“Schedule 1” chemicals are those toxic chemicals and precursors identified in the Convention as posing a high risk to the object and purpose of the Convention. The “Schedule 1” chemicals are set forth in the Convention’s “Annex on Chemicals,” as well as in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (15 CFR 712).

The “Schedule 1” provisions of the Convention that affect commercial activities are implemented through part 712 of the Chemical Weapons Convention Regulations and parts 742 and 745 of the Export Administration Regulations, both administered by the Bureau of Industry and Security. These regulations:

(1) Prohibit the import of “Schedule 1” chemicals from States not Party to the Convention (15 CFR 712.2(a));

(2) Require annual declarations by certain facilities engaged in the production of “Schedule 1” chemicals in excess of 100 grams aggregate per calendar year (i.e., declared “Schedule 1” facilities) for purposes not prohibited by the Convention (15 CFR 712.3(a)(2) and (a)(3));

(3) Require government approval of “declared Schedule 1” facilities (15 CFR 712.3(e));

(4) Provide that “declared Schedule 1” facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.3(d) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new “Schedule 1” production facilities producing greater than 100 grams aggregate of “Schedule 1” chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of “Schedule 1” chemicals to, or from, other States Parties to the Convention (15 CFR 712.5, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of “Schedule 1” chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

#### Discussion and Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are being significantly harmed by the limitations of the Convention on access to, and production of, “Schedule 1” chemicals, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention has had on commercial activities involving “Schedule 1” chemicals through calendar year 2005.

#### Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 6, 2005. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS’s Office of Administration, at (202) 482-0637, for assistance.

Dated: November 2, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 05-22159 Filed 11-7-05; 8:45 am]

**BILLING CODE 3510-33-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-533-502, A-583-008, A-549-502, A-489-501, A-351-809, A-201-805, A-580-809, A-583-814)

#### Certain Circular Welded Carbon Steel Pipes and Tubes from India, Taiwan, Thailand, and Turkey, and Circular Welded Non-Alloy Steel Pipe from Brazil, Republic of Korea, Mexico, and Taiwan; Notice of Final Results of Expedited Five-Year (“Sunset”) Reviews of Antidumping Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 1, 2005, the Department of Commerce (“the Department”) initiated the second sunset reviews of the antidumping duty orders on certain circular welded carbon steel pipes and tubes from India, Taiwan, Thailand, and Turkey, and circular welded non-alloy steel pipe from Brazil, Republic of Korea (“Korea”), Mexico, and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and inadequate response from respondent interested parties, the Department has conducted expedited sunset reviews of these antidumping duty orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the level indicated in the “Final Results of Review” section of this notice.

**EFFECTIVE DATE:** November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dana Mermelstein, Antidumping/Countervailing Duty Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone:(202) 482-1391.

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to section 736 of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** the antidumping duty orders on Certain Circular Welded Carbon Steel Pipes and Tubes from India, Taiwan, Thailand, Turkey, and Circular Welded Non-Alloy Steel Pipe from Brazil, Korea, Mexico, and Taiwan. See *Antidumping Duty Order; Certain*

*Welded Carbon Steel Standard Pipes and Tubes from India*; 51 FR 17384 (May 12, 1986), *Certain Circular Carbon Welded Pipes and Tubes from Taiwan; Antidumping Duty Order*, 49 FR 19369 (May 7, 1984), *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand*; 51 FR 8341 (March 11, 1986), *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 51 FR 17784 (May 15, 1986), *Antidumping Duty Orders; Certain Welded Non Alloy Steel Pipe from Brazil, Korea, and Mexico and Amendment to Final Determination of Sales at Less than Fair Value; Certain Circular Welded Non Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992); *Antidumping Duty Order: Circular Welded Non Alloy Steel Pipe from Taiwan*, 57 FR 49454 (November 2, 1992).

Pursuant to section 751(c) of the Act, on August 22, 2000, the Department published the continuation notice of the antidumping duty orders on Certain Circular Welded Carbon Steel Pipes and Tubes from India, Taiwan, Thailand, Turkey, and Circular Welded Non-Alloy Steel Pipe from Brazil, Korea, Mexico, and Taiwan, after the ITC found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

On July 1, 2005, the Department published a notice of initiation of the second sunset reviews of the antidumping duty orders on Certain Circular Welded Carbon Steel Pipes and Tubes from India, Taiwan, Thailand, Turkey, and Circular Welded Non-Alloy Steel Pipe from Brazil, Korea, Mexico, and Taiwan, pursuant to section 751(c) of the Act.<sup>2</sup>

For each of these sunset reviews, the Department received notice of intent to participate from Allied Tube and Conduit, Copperweld Corporation, IPSCO Tubulars, Leavitt Tube Company, Maverick Tube Corporation, Northwest Pipe Company, Sharon Tube Company, Western Tube and Conduit, and Wheatland Tube Company (collectively, "the domestic interested parties"), within the deadline specified in section

351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise.

On June 29, 2005, we received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive any responses from respondent interested parties to these proceedings. On October 25, 2005, the Department received amendments to the July 29, 2005, substantive responses from the domestic interested parties because Mariuchi American Corporation was erroneously included as one of the domestic interested parties.

Based on these circumstances, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department has conducted expedited sunset reviews of these antidumping duty orders.

#### Scopes of the Antidumping Duty Orders

See Appendix 1

#### Analysis of Comments Received

All issues raised in these cases are addressed in the *Issues and Decision Memorandum for Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Circular Welded Carbon Steel Pipes and Tubes from India, Taiwan, Thailand, Turkey, and Circular Welded Non-Alloy Steel Pipe from Brazil, Korea, Mexico, and Taiwan* from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, ("Decision Memo"), dated October 31, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memo, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "November 2005". The paper copy and electronic version of the Decision Memo are identical in content.

#### Final Results of Reviews

We determine that revocation of the antidumping duty orders on Certain Circular Welded Carbon Steel Pipes and Tubes from India, Taiwan, Thailand, Turkey, and Circular Welded Non-Alloy Steel Pipe from Brazil, Korea, Mexico, and Taiwan would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
<b>India (A-533-502).</b>	
Tata Iron and Steel Company, Ltd. ....	7.08
All Others .....	7.08
<b>Taiwan (A-583-008).</b>	
Kao Hsing Chang .....	9.70
Tai Feng .....	43.70
Yieh Hsing .....	38.50
All Others .....	9.70
<b>Thailand (A-549-502).</b>	
Saha Thai Steel Pipe Co. ....	15.69
Thai Steel Pipe Industry Co. ....	15.60
All Others .....	15.67
<b>Turkey (A-489-501).</b>	
Borusan Ithicat ve Dagitim .....	1.26
Erkboru Profil Sanayi ve Ticaret .....	23.12
Mannesmann-Sumerbank Boru Industriisi .....	
All Others .....	14.74
<b>Brazil (A-351-809).</b>	
Perisco Pizzamiglio S.A. ....	103.38
All Others .....	103.38
<b>Korea (A-580-809).</b>	
Hyundai Steel Pipe Co., Ltd .....	6.86
Korea Steel Pipe Co., Ltd .....	6.21
Masan Steel Tube Works Co., Ltd .....	11.63
Pusan Steel Pipe Co., Ltd. ....	4.91
All Others .....	6.37
<b>Mexico (A-201-805).</b>	
HYLSA, S.A. de C.V. ....	32.62
All Others .....	32.62
<b>Taiwan (A-580-814).</b>	
Kao Hsing Chang Iron and Steel Corp. ....	19.46
Yieh Hsing Enterprise Co., Ltd. ....	27.65
All Others .....	23.56

This notice serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations.

Timely notification of the return or destruction of APO materials or conversion to judicial protective order is

<sup>1</sup> See *Continuation of Antidumping Duty Orders; Light-Walled Rectangular Welded Carbon Steel Pipe and Tube From Taiwan; Circular Welded Non Alloy Steel Pipe and Tube from Brazil, Korea, Mexico, and Taiwan; Welded Carbon Steel Pipe and Tube From India, Thailand, and Turkey; and Small Diameter Standard and Rectangular Steel Pipe and Tube from Taiwan*, 65 FR 50955 (August 22, 2000).

<sup>2</sup> See *Initiation of Five-Year ("Sunset") Reviews*, 70 FR 38101 (July 1, 2005).

hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 31, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

## APPENDIX 1

### Scopes of the Antidumping Duty Orders

#### *India -- Welded Carbon Steel Pipe and Tube (A-533-502)*

The merchandise subject to this antidumping duty order include circular welded non-alloy steel pipe and tube, of circular cross-section, but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipe and tube are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells. The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipe and tube within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Imports of the products covered by this order are currently classifiable under the following Harmonize Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

#### *Taiwan -- Circular Welded Carbon Steel Pipe and Tube (Small Diameter Carbon Steel Pipe and Tube) (A-583-008)*

The merchandise subject to this antidumping duty order are shipments

of certain circular welded carbon steel pipe and tube. The Department defines such merchandise as welded carbon steel pipe and tube of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4 1/2 inches in outside diameter. These products are commonly referred to as "standard pipe" and are produced to various American Society for Testing Materials Specifications, most notably A-53, A-120, or A-135. Standard pipe is currently classified under HTSUS item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055.

#### *Thailand -- Welded Carbon Steel Pipe and Tube (A-549-502)*

The merchandise subject to this antidumping duty order is certain circular welded carbon steel pipe and tube, commonly referred to in the industry as "standard pipe" or "structural tubing," with walls not thinner than 0.065 inches, and 0.375 inches or more, but not over 16 inches in outside diameter. The subject merchandise was classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252, 610.3254, 610.3256, 610.3258, 610.4925 of the Tariff Schedule of the United States of America (TSUSA). Currently, it is classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, and 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090 of the HTSUS. There was one scope ruling in which British Standard light pipe 387/67, Class A-1 was found to be within the scope of the order per remand (58 FR 27542, May 10, 1993).

#### *Turkey -- Welded Carbon Steel Pipe and Tube (A-489-501)*

The merchandise subject to this antidumping duty order includes circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 16 inches in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted) or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipe and tube are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical

applications, such as for fence tubing, and for protections of electrical wiring, such as conduit shells. The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipe and tube within the physical description outline above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. The subject merchandise was classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252, 610.3254, 610.3256, 610.3258, 610.4925 of the TSUSA; currently, it is classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, and 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090 of the HTSUS.

#### *Brazil, Korea and Mexico -- Circular Welded Non-Alloy Steel Pipe and Tube (A-351-809, A-580-809, A-201-805)*

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

*Taiwan* -- Circular Welded Non-Alloy Steel Pipe and Tube (A-583-814)

The products covered by this order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in this order. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in this investigation.

Imports of the products covered by this order are currently classifiable under

the following Harmonized Tariff Schedule (HTS) subheadings, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[FR Doc. 05-22241 Filed 11-7-05; 8:45 am]

BILLING CODE: 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-807]

#### **Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 6, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey (70 FR 23990). This review covers four producers/exporters of the subject merchandise to the United States. The period of review (POR) is April 1, 2003, through March 31, 2004. We are rescinding the review with respect to 18 companies because they had no shipments of subject merchandise to the United States during the POR. In addition, we have determined to revoke the antidumping duty order with respect to an additional exporter, ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Alice Gibbons, Office of AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-0656 and (202) 482-0498, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

This review covers the following four producers/exporters: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively "Colakoglu"); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler"); Habas Tibbi ve Sinai Gazlar Istihsal Endustrisi A.S. (Habas); and ICDAS.

On May 6, 2005, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on rebar from Turkey. See *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent To Revoke in Part*, 70 FR 23990 (May 6, 2005) (*Preliminary Results*).

Prior to the preliminary results, the following companies informed the Department that they had no shipments to the United States during the POR: Cebitas Demir Celik Endustrisi A.S. (Cebitas); Cemtas Celik Makina Sanayi ve Ticaret A.S. (Cemtas); Demirsan Haddecilik Sanayi ve Ticaret A.S. (Demirsan); Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege Celik); Ekinciler Holding A.S. and Ekinciler Demir Celik San A.S. (collectively "Ekinciler"); Iskenderun Iron & Steel Works Co. (Iskenderun); Izmir Demir Celik Sanayi A.S. (Izmir); Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan); Metas Izmir Metalurji Fabrikasi Turk A.S. (Metas); Nurmet Celik Sanayi ve Ticaret A.S. (Nurmet); Nursan Celik Sanayi ve Haddecilik A.S. (Nursan); Sivas Demir Celik Isletmeleri A.S. (Sivas); and Tosyali Demir Celik Sanayi A.S. (Tosyali). We reviewed U.S. Customs and Border Protection (CBP) data and confirmed that there were no entries of subject merchandise from any of these companies. We also confirmed with CBP data that Ege Metal Demir Celik Sanayi ve Ticaret A.S. (Ege Metal); Kardemir--Karabuk Demir Celik Sanayi ve Ticaret A.S. (Karabuk); Kroman Celik Sanayi A.S. (Kroman); Kurum Demir Sanayi ve Ticaret Metalenerji A.S. (Kurum); and Ucel Haddecilik Sanayi ve Ticaret A.S. (Ucel) did not have entries of subject merchandise during the POR. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for Cebitas, Cemtas, Demirsan, Ege Celik, Ege Metal, Ekinciler, Iskenderun, Izmir, Kaptan, Karabuk, Kroman, Kurum, Metas, Nurmet, Nursan, Sivas, Tosyali, and Ucel. For further discussion, see the "Partial

Rescission of Review” section of this notice, below.

We invited parties to comment on our preliminary results of review. In June and July 2005, we received case briefs from the petitioners (i.e., Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation), Diler, Habas, and ICDAS, and rebuttal briefs from the petitioners, Colakoglu, Diler, Habas, and ICDAS.

The Department has conducted this administrative review in accordance with section 751 of the Act.

#### Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

#### Period of Review

The POR is April 1, 2003, through March 31, 2004.

#### Partial Rescission of Review

As noted above, Cebitas, Cemtas, Demirsan, Ege Celik, Ege Metal, Ekinciler, Iskenderun, Izmir, Kaptan, Karabuk, Kroman, Kurum, Metas, Nurmet, Nursan, Sivas, Tosyali, and Ucel had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with CBP data. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department’s practice, we are rescinding our review with respect to these companies. *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Administrative Review in Part, and Determination Not to Revoke in Part*, 69 FR 64731, 64732 (Nov. 8, 2004) (2002–2003 Rebar Final).

#### Determination To Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has

not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, inter alia, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i). *See Sebacic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part*, 67 FR 69719, 69720 (Nov. 19, 2002).

We have determined that the request from ICDAS meets all of the criteria under 19 CFR 351.222. With regard to the criteria of subsection 19 CFR 351.222(b)(2), our final margin calculations show that ICDAS sold rebar at not less than NV during the current review period. In addition, ICDAS sold rebar at not less than NV in the two previous administrative reviews in which it was involved (i.e., ICDAS’s dumping margin was zero or *de minimis*). *See 2002–2003 Rebar Final and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127 (Sept. 9, 2003). Also, we find that application of the antidumping duty order to ICDAS is no longer warranted for the following reasons: (1) the company had zero or *de minimis*

margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping. For further discussion, see Comment 18 of the accompanying “Issues and Decision Memorandum” (Decision Memo) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated November 2, 2005. Therefore, we find that ICDAS qualifies for revocation of the antidumping duty order on rebar under 19 CFR 351.222(b)(2). Accordingly, we are revoking the order with respect to subject merchandise produced and exported by ICDAS.

#### Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced and exported by ICDAS, and are entered, or withdrawn from warehouse, for consumption on or after April 1, 2004. The Department will order the suspension of liquidation ended for all such entries and will instruct CBP to release any cash deposits or bonds. The Department will further instruct CBP to refund with interest any cash deposits on entries made on or after April 1, 2004.

#### Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning

of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the Decision Memo.

We found 20 percent or more of each respondent’s sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in “substantial quantities” within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Diler, Habas and ICDAS made below-cost sales not in the ordinary course of trade.

Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining NV pursuant to section 773(b)(1) of the Act.

#### Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memo are identical in content.

#### Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

#### Final Results of Review

We determine that the following weighted-average margin percentages exist for the period April 1, 2003, through March 31, 2004:

Manufacturer/producer/exporter	Margin percentage
Colakoglu .....	0.00
Diler .....	0.31
Habas .....	26.07
ICDAS .....	0.16

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for all of Habas's sales and certain of ICDAS's sales and because we have the reported entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding all of Colakoglu's and Diler's sales, as well as certain of ICDAS's sales, we note that these companies did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by

the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the export prices.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisal instructions directly to CBP.

#### Cash Deposit Requirements

Because we have revoked the order with respect to subject merchandise produced and exported by ICDAS, we will order CBP to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 2004, and to refund all cash deposits collected.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey (except shipments from ICDAS noted above) entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: 1) The cash deposit rates for the reviewed companies will be the rates indicated above (except for ICDAS and Diler, whose weighted-average margins are *de minimis*, where no cash deposit will be required); 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or in the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

review period. Failure to comply with this

requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 2, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

#### Appendix Issues in Decision Memorandum

##### General Issues

1. Cost Averaging Periods for Habas and ICDAS
2. Depreciation Expenses
3. Matching Criteria
4. Exchange Rates
5. Universe of Sales
6. Date of Sale for Habas and ICDAS
7. Ministerial Errors in the Preliminary Results

##### Company-Specific Issues

8. Cost of Billets for Colakoglu
9. Financing Expenses for Colakoglu
10. Movement Expenses Provided by an Affiliate of Diler
11. Affiliated Party Billet Purchases for Diler
12. Edge and Defective Rebar Offsets to Cost of Manufacturing (COM) for Diler
13. Offsets to General and Administrative (G&A) Expenses for Diler
14. Denominator of the G&A and Interest Expense Calculations for Diler
15. Interest Expense Calculation for Diler
16. Omitted Costs for Diler
17. Offsets to G&A Expenses for Habas
18. Revocation for ICDAS
19. Affiliated Party Sales in ICDAS's Home Market
20. Arm's-Length Test for ICDAS
21. Level of Trade (LOT) for ICDAS
22. Whether to Treat ICDAS's U.S. Sales as Export Price (EP) or Constructed Export Price (CEP) Sales

23. Collapsing Issue for ICDAS  
 24. Startup Adjustment for ICDAS  
 25. Gain on Sale of Ship for ICDAS  
 26. Calculation of G&A Expenses for ICDAS

27. Exchange Rate Gains for ICDAS  
 [FR Doc. 05-22242 Filed 11-7-05; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-601

#### Notice of Extension of Final Results of the 2003-2004 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-3434 and (202) 482-4243, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 11, 2005, the Department published the preliminary results of review and partial rescission of this administrative review of TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744 (July 11, 2005) ("Preliminary Results"). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty review no later than 120 days after the date of publication of the preliminary results (*i.e.*, November 8, 2005).

##### Extension of Time Limit for Final Results

The Department of Commerce ("the Department") is extending the time limit for the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). This review covers the period June 1, 2003, through May 31, 2004.

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable due to issues arising from verification.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional sixty days until no later than January 7, 2006.

Dated: November 2, 2005.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 05-22251 Filed 11-7-05; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

(C-533-844, C-560-819)

#### Certain Lined Paper Products from India and Indonesia: Extension of Time Limit for Preliminary Determinations in the Countervailing Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Maura Jeffords or Robert Copyak (India), and David Layton or David Neubacher (Indonesia) AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3146 or (202) 482-2209, and (202) 482-0371 or (202) 482-5823, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 29, 2005, the Department of Commerce ("the Department") initiated the countervailing duty investigations of lined paper products from India and Indonesia. *See Notice of Initiation of Countervailing Duty Investigation: Certain Lined Paper Products from India and Indonesia*, 70 FR 58690 (October 7, 2005). Currently, the preliminary determinations are due no later than December 5, 2005.

#### Extension of Due Date for Preliminary Determination

On October 20, 2005, the Association of American School Paper Suppliers ("Petitioner") submitted a letter requesting that the Department postpone the preliminary determinations of the countervailing duty investigations of certain lined paper products from India and Indonesia by 65 days. Under section 703(c)(1)(A) of the Act, the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until not later than the 130<sup>th</sup> day after the date on which the administering authority initiates an investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) (section 703(b) of the Act). Accordingly, we are extending the due date for the preliminary determinations by 65 days to no later than February 6, 2006.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: November 1, 2005.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 05-22243 Filed 11-7-05; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for the Gulf of the Farallones National Marine Sanctuary Advisory Council

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) is seeking applicants for the following seats on its Sanctuary Advisory Council (Advisory Council):

At Large for Marin/Sonoma Counties (Primary and Alternate).

At Large for San Francisco/San Mateo Counties (Primary and Alternate).

Conservation (two Primary seats and two Alternates).

Education (Primary and Alternate).

Maritime Activities/Commercial (Primary and Alternate).

Maritime Activities/Recreational (Primary and Alternate).

Research (Primary and Alternate).

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve either a two or three-year term, pursuant to the Advisory Council's Charter.

**DATES:** Applications are due by December 31, 2005.

**ADDRESSES:** Application kits may be obtained from Rowena Forest, Advisory Council Coordinator, Gulf of the Farallones National Marine Sanctuary, P.O. Box 159, Olema, CA 94950, (415) 663-0314 extension 105, [rowenaforest@noaa.gov](mailto:rowenaforest@noaa.gov), and over the Internet at: <http://farallones.noaa.gov/manage/sac.html>. Completed applications should be sent to the above mailing address.

**FOR FURTHER INFORMATION CONTACT:** Rowena Forest, Advisory Council Coordinator, Gulf of the Farallones National Marine Sanctuary, P.O. Box 159, Olema, CA 94950, (415) 663-0314 x105, [rowenaforest@noaa.gov](mailto:rowenaforest@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf of the Farallones National Marine Sanctuary (GFNMS) was established in 1981 to protect the near shore waters of the California Coast north and west of San Francisco, and the offshore Farallon Islands. The Sanctuary includes nursery and spawning grounds for commercially important species, over 33 species of marine mammals, and 15 species of breeding seabirds. The Farallon Islands themselves contain the largest concentration of breeding seabirds in the contiguous United States. Key habitats include coastal beaches, rocky shores, mud and tidal flats, salt marsh, estuaries, and pelagic waters.

Additionally, the area within the Monterey Bay National Marine Sanctuary (MBNMS) north of the San Mateo/Santa Cruz county boundary is administered by the GFNMS. The legal boundaries of each sanctuary remain as is. The GFNMS is responsible for developing and managing most sanctuary programs within this area, with the exception that the MBNMS is responsible for the Water Quality Protection Program.

The GFNMS Advisory Council was originally chartered in 2001, with seven voting members. It has recently been expanded to 12 voting members. The primary focus of the Council is to advise the Sanctuary Manager regarding the implementation of the sanctuary

management plan, in conjunction with the contiguous Monterey Bay and Cordell Bank National Marine Sanctuaries.

**Authority:** 16 U.S.C. 1431, et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 1, 2005.

**Daniel J. Basta,**

*Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 05-22172 Filed 11-7-05; 8:45 am]

**BILLING CODE 3510-NK-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 051102288-5288-01; I.D. 102805B]**

#### New Bedford Harbor Trustee Council; Proposed Funding for Natural Resource Restoration Projects

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

**ACTION:** Notice; request for comments.

**SUMMARY:** On behalf of the New Bedford Harbor Trustee Council (Council), NMFS, serving as the Administrative Trustee, publishes this notice to see comment on its proposed funding of six restoration projects for possible implementation through funding from the AVX Natural Resource Damages Trust Account (Trust Account). The Council, through an earlier published *Federal Register* notice requested grant applications for projects to restore natural resources that were injured by the release of hazardous substances and materials, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor Environment (Harbor Environment). Nineteen grant applications for natural resource restoration projects were submitted for consideration by the Council. The Council is now seeking public comment on the preferred projects to assist in making a final decision on projects eligible for funding.

**DATES:** The Council will accept comments on the proposed restoration projects through 30 days after date of publication in the **Federal Register** and will hold a public hearing regarding the preliminary selection.

The public hearing will be held on November 16, 2005, at 7 p.m.

**ADDRESSES:** Please send your comments by email to: [NBHTC@noaa.gov](mailto:NBHTC@noaa.gov) or by

mail to: New Bedford Harbor Trustee Council, c/o National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn.: Jack Terrill. Comments also may be sent via facsimile (fax) to 978-281-9301.

The public hearing will be held at the Days Inn, 500 Hathaway Road, New Bedford, MA.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill, Coordinator, 978-281-9136, fax 978-281-9301, or e-mail [Jack.Terrill@NOAA.GOV](mailto:Jack.Terrill@NOAA.GOV).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

New Bedford Harbor is located in southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. The Harbor and River are contaminated with high levels of hazardous substances and materials, including PCBs, and as a consequence are on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List. This site is also listed by the Massachusetts Department of Environmental Protection as a priority Tier 1 disposal site.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund," 42 U.S.C. 9601 *et seq.*) designates as possible natural resource trustees Federal, state, or tribal authorities who represent the public interest in natural resources. The trustees are responsible for recovering funds through litigation or settlement for damages for natural resource injuries. CERCLA requires that any recovered monies be used to "restore, replace, or acquire the equivalent of" the natural resources that have been injured by a release of a hazardous substance.

For the New Bedford Harbor Superfund Site, there are three natural resource trustees on the Council representing the public interest in the affected natural resources. They are the Department of Commerce (DOC), the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated DOC trustee responsibility to NOAA; within NOAA, NMFS has responsibility for natural resource restoration at this site. The Secretary of the Interior has delegated trustee responsibility to the U.S. Fish and Wildlife Service. The Governor of Massachusetts has delegated trustee responsibility to the Secretary of Environmental Affairs.

To initiate restoration of the New Bedford Harbor Environment the Council previously issued two "Request(s) for Restoration Ideas" in October 1995 (60 FR 52164, October 5,

1995) (Round I) and August 1999 (64 FR 44505, August 16, 1999) (Round II). For each round, restoration ideas were received from the local communities, members of the public, academia and state and federal agencies. The 56 restoration ideas submitted under Round I were the basis for the alternatives listed in the Council's "Restoration Plan for the New Bedford Harbor Environment" (Restoration Plan) that was developed to guide the Council's restoration efforts. An environmental impact statement (EIS) was prepared in conjunction with the Restoration Plan to fulfill requirements of the National Environmental Policy Act. A record of decision, issued on September 22, 1998 for both the Restoration Plan and the EIS, provided for implementation of 11 Round I preferred restoration projects through funding provided by the Trust Account.

Thirty-five restoration ideas were submitted to the Council under Round II. Following procedures established in the Restoration Plan/EIS, an environmental assessment was prepared to evaluate the ideas. A public comment period/hearing was held and after consideration of the comments received, the Trustee Council decided to pursue implementation of 17 restoration ideas.

Rather than requesting restoration ideas, Round III solicited grant applications for natural resource restoration projects. This process has the advantage of allowing for faster implementation of projects by having applicants conduct the restoration projects after receiving direct funding through NOAA-issued grants. Further this process allows Trustee Council staff to continue implementation of Round I and Round II projects while still providing oversight to Round III projects.

The Round III solicitation appeared in the **Federal Register** (70 FR 5191, February 1, 2005), on the World Wide Web on GRANTS.GOV where a Federal Funding Opportunity (FFO) was published, and on the Trustee Council's webpage at [www.restorenbh.gov](http://www.restorenbh.gov). A total of 19 applications were received, but of these, four were rejected for not being related to the New Bedford Harbor restoration activities. Following procedures specified in the FFO, technical reviewers independently rated each application using five evaluation criteria which totalled 100 points. The applications were then ranked by the total score received. In addition to the technical review, a legal review was conducted to ensure the resulting projects were consistent with the requirements of CERCLA. The results of

the technical review was provided as a recommendation to the Trustee Council.

The FFO also established in Section V.B. Review and Selection, that the "Council will review the recommendation, accept or modify the recommendations, and make a preliminary determination of the projects it expects to undertake." Following this, the Council will initiate a 30-day comment period during which a public hearing would be held.

The Council is now seeking public review of the preferred projects and the proposed level of funding for each project. The public is also invited to attend a public hearing (see **DATES** and **ADDRESSES**) to provide oral comment based upon its review of the Trustees' preliminary recommendations.

At the conclusion of the comment period, the Council will consider the comments from the public and its advisors before making final decisions on the projects eligible for funding through the Trust Account.

Prior to final approval for funding, all selected projects require environmental review under applicable law and the submission of detailed scopes of work for Council review and approval. The release of funds may be conditioned on the results of project activity such as feasibility studies or assessments. In addition, implementation of the projects may be conditioned or delayed, and the funds therefore held in reserve, until more information becomes available or specific conditions are met. Funds held in reserve will continue to be held in the interest bearing Trust Account, administered by the Court Registry Investment System of the United States District Courts.

## **II. The Preferred Project Ideas Recommended by the Trustee Council**

Below is a description of the preferred projects proposed by the Council for potential implementation and funding. A draft environmental assessment has been prepared which provides further information on the preferred projects and a discussion of those ideas which are not considered preferred projects. The draft environmental assessment is available at the Council office (see **ADDRESSES**) or by accessing the Council website <http://www.restorenbh.gov>.

### *1. Acushnet River: "Headwaters to Bay" Land Conservation Project.*

The project was composed of four separate subprojects which follow:

a. Acushnet River North (Requested amount: \$833,500; Council suggested amount: to be determined based upon the option chosen)

The project is located in East Freetown and Acushnet, MA at the headwaters of the Acushnet River. The alternative is to provide funding for the purchase of 88 acres (35.6 hectares) of undisturbed forest and wetlands west of Squam Brook and open the property to the public for passive recreational use. The parcel would also be protected through the attachment of a permanent conservation restriction to the deed. An additional 90 acres (36.4 hectares) east of Squam Brook would be protected through the purchase of a conservation restriction (CR) on the land. This action would prevent any future development of the land and preserve the existing agricultural use (cranberry production) in accordance with Best Management Practices. The eastern portion of the site would remain in private ownership with public access limited by the owners.

The Trustee Council has preliminarily approved the project for possible implementation pending public comment on its decision and the project. The Trustee Council is considering two options for the project: (1) Purchase and/or CR of the entire property or (2) purchase and/or CR of the western portion of the property only. The western portion is characterized by upland forest and wetlands leading down to an irrigation reservoir and Squam Brook. This second option would not purchase a CR on the eastern portion where there are active cranberry bog operations. The Council favors outright purchase, the second option, to provide greater protection to the headwaters since there is development pressure in this area. The Council is not as interested in the eastern portion unless the potential exists for restoring the natural condition of the wetlands.

b. Acushnet Saw Mill (Requested amount: \$1,651,500; Council suggested amount: to be determined based upon the option chosen)

This project is located in Acushnet, MA on the Acushnet River at a point where the freshwater portion ends and the tidal estuary begins. Funds would be provided for the fee simple purchase and conservation restriction of 21 acres (8.5 hectares) (consisting of field, forest, riverfront, freshwater pond and marsh) at the Acushnet Sawmill site from its present owners. The site is the location of the first dam on the Acushnet River that is being examined by the Trustee

Council and the Massachusetts Division of Marine Fisheries for modifications to restore anadromous fish passage under Round I. There are presently three buildings located on site as well as other structures associated with a once active sawmill and lumberyard. The applicant envisions restoring this site to a natural state through the removal of all the buildings and pavement covering approximately 4 acres (1.6 hectares). While this may be a long-term objective of the applicant, the only action to be taken at this time is the fee simple acquisition and conservation restriction. This action would prevent further development of the site.

The Trustee Council has preliminarily approved the project for possible implementation pending public comments on its decision and the project. The Trustee Council is considering two options for the project: (1) Purchase and/or CR of the entire property or (2) purchase and/or CR of the undeveloped portion of the property composed primarily of the eastern portion of the property. The concern over the developed portion is the amount of effort needed to restore the property to natural conditions and the various unknowns associated with the commercial use (e.g. sawmill operations) of the site. The Council has not made a decision on either option and invites public comment.

c. Marsh Island South (Requested amount: \$447,500; Council suggested amount: up to \$397,500)

The project is located in Fairhaven, MA in the Inner Harbor just south of the Route 195 crossing. Funds would be provided for the fee simple purchase and conservation restriction of a 7.68-acre (3.1-hectare) site on the southern portion of a peninsula known as Marsh Island in Fairhaven. (The remaining northern portion of Marsh Island was purchased using Trustee Council funds authorized in Round II. The Trustee Council is investigating the feasibility of restoring the salt marsh that was present before fill was placed on the island.) Prior to the purchase, funds would be provided for a title examination, fair market real estate appraisal, environmental site assessment and survey (if needed).

The Trustee Council has preliminarily approved the project for possible implementation subject to consideration of public comment. The Council is concerned about the two existing radio towers on site and will explore with the applicant options for their eventual removal. The Council does not believe the \$50,000 for "Restoration Planning and Design" is required since the

Council is already funding efforts on Marsh Island revolving around salt marsh restoration.

d. Viveiros Farm (Requested amount: \$1,270,000; Council suggested amount: up to \$1,270,000)

The project is located on the eastern side of Sconticut Neck, Fairhaven, MA. The overall project goal is to protect 127 acres (51.4 hectares) (comprised of farmland, salt marsh, freshwater wetlands and coastal beach) from future development through a combination of land protection methods. Funding would be used for a fee simple purchase on 40 acres (16.2 hectares) and a conservation restriction would be placed on 16 acres (6.5 hectares). The remaining 71 acres (28.3 hectares) would be acquired using an Agricultural Protection Restriction (APR) through the Massachusetts Department of Agricultural Resources (MDAR). The amount requested from the Trustee Council would be cost shared with \$2,050,000 coming from a North Atlantic Wetland Conservation Act oil spill grant, a MDAR grant and other municipal and private sources.

The Trustee Council has preliminarily approved the project for possible implementation subject to consideration of public comment. The Trustee Council would like clarification on how its funding would be used and for which components of the project. The Council is uncertain whether Council funding would be used to supplement MDAR funding for the APR. The Council is not interested in funding the APR and does not want agricultural use of the Council funded portion of the land.

2. *Apponagansett Bay Resource Restoration Feasibility Study (Requested amount: \$175,000; Council suggested amount: \$175,000)*

The project is located in Dartmouth, MA where the Padanaram Causeway crosses Apponagansett Bay. The project would investigate the feasibility of restoring a more natural tidal exchange between inner Apponagansett Bay, outer Apponagansett Bay and Buzzards Bay by installing additional openings in the Padanaram causeway. A feasibility study would be conducted to determine whether modifying the Padanaram causeway will increase tidal flushing with the inner Bay with the goal of restoring upstream degraded resources, including salt marsh and shellfish beds.

The feasibility study would consist of two phases. The first phase would consist of data collection and developing and running a hydrodynamic model. The results of the first phase will describe the

modifications to the causeway (such as installing additional culverts in the causeway) necessary to improve the resources of Apponagansett Bay and quantify the effects of such actions. The results of the first phase of the feasibility study would be presented to the Trustee Council. Should the results demonstrate that the project is worth the Council's continued support, the second phase of the feasibility study would be implemented. The second phase consists of the development of conceptual restoration plans that could be used to produce construction cost estimates and discuss regulatory approvals. Once this study is complete, the effects of additional openings in the causeway and the costs of implementing these changes will be known and a preferred restoration alternative will be developed. Funds for the further design, permitting and construction for such a project could be requested in a future Trustee Council funding round.

The Trustee Council has preliminarily chosen to include the study as a preferred study for possible funding and implementation after consideration of public comment. Funding would be provided for the initial feasibility investigation (data gathering and hydrodynamic modeling) and if the results are favorable, and the Trustee Council approves, funding would then be provided for the second phase to produce the conceptual plan.

3. *Restoration and Management of Tern Populations (Requested amount: \$833,336.15; Council suggested amount: \$833,336.15)*

The project is located on three islands in Buzzards Bay: Bird Island, Marion, Massachusetts; Ram Island, Mattapoisett, Massachusetts; and Penikese Island, Gosnold, Massachusetts. Roseate and common terns were injured while feeding on PCB-contaminated fish in the New Bedford Harbor Environment. The project goal is to rebuild and restore the population of roseate terns (a federally listed endangered species) and common terns through management or enhancement of nesting locations. The management aspect of this project involves moving other species, such as gulls, off the nesting areas and the daily monitoring of the terns that locate at the three islands. The project would also increase nesting habitat on Ram Island by removing an invasive plant *Phragmites australis* and filling an eroded section of the island.

This idea would extend the work being conducted under restoration funding from Rounds I and II for an additional period of three years. Round

I provided funding (\$266,400) to implement biological management and monitoring of tern colonies at Bird Island and Ram Island to restore populations of common terns and roseate terns. At Penikese Island, the project focused on reclaiming the island as a nesting site by managing gulls. Preliminary engineering work to stabilize Bird Island and toxicological analyses of tern eggs were also funded. Round II funding (\$853,600) continued the Round I management efforts at the three islands for an additional six years. Further work was done to assess what needed to be done to improve tern nesting habitat at Bird Island. Samples of unhatched tern eggs were collected for chemical analysis. Overall tern numbers on the islands have increased 59 percent since Trustee Council funding commenced.

The Trustee Council has preliminarily chosen to include the project as a preferred project for possible funding and implementation after consideration of public comment.

**4. River Road Restoration Project**  
(Requested amount: \$954,453; Council suggested amount: \$195,000 for wetland restoration components and signage)

The project is located at 246 River Road, New Bedford, MA and is composed of 2.5 acres (1.0 hectares) of city-owned land along the Acushnet River. The project would return a former industrial site to open space including restoring a 23,000-square foot (2,137-square meter) salt marsh on filled tideland and creating walking trails, interpretative signs, canoe/kayak launch, picnic area, play area, lawn and parking area. The Acushnet River along this location has been the subject of EPA and the U.S. Army Corps of Engineers recent cleanup activity involving the removal of bottom sediments and replanting along the shoreline.

The Trustee Council has preliminarily approved only the wetland restoration component of the project for possible implementation after consideration of public comment. The wetland restoration component will provide a direct benefit to injured natural resources.

**5. Round Hill Salt Marsh Restoration Project**  
(Requested amount: \$164,000; Council suggested amount: \$164,000)

The project is located at Round Hill Point, Dartmouth, MA. The project would conduct an investigation exploring the feasibility of restoring up to 24 acres (9.7 hectares) of coastal salt marsh through the removal of significant amounts of fill material and re-grading to historic marsh elevations

at the Round Hill Salt Marsh Restoration Site. A phased approach would be taken with Phase I involving a feasibility study and Phase II involving the conceptual design of the proposed project.

Under Phase I, a contractor would be hired to complete a full feasibility study including development of historical background/site history, base mapping (vegetation, topographic and bathymetric maps as necessary), hydrologic and alternatives analyses and cut and fill calculations. Upon completion of Phase I, the feasibility study would be presented to the Trustees for their consideration and approval. If approved by the Trustee Council and project partners, the second Phase (Phase II) would proceed with conceptual design.

Conceptual design would include development of conceptual alternatives and estimates of project costs. Completion of conceptual designs and cost estimates will be used to further develop the project with partners and regulatory authorities and aid in identifying a potential preferred alternative. Upon successful completion through Phase II with a conceptual design, the project team would re-apply for additional Trustee Council funding through future funding opportunities to complete final design, permitting and construction.

The Trustee Council has preliminarily chosen to include the project as a preferred study for possible funding and implementation after consideration of public comment. Funding would be provided for the initial feasibility study. If the results are favorable and the Trustee Council approves, funding would then be provided for the second phase to produce the conceptual design and alternatives analysis.

**6. West Island Beach**  
(Requested amount: \$162,000; Council suggested amount: \$162,000)

The project site is located at the entrance to West Island Beach in Fairhaven, MA. The project is intended to increase full tidal exchange to a tidally-restricted 8-acre (3.2-hectare) salt marsh by replacing an undersized culvert with a properly-sized culvert beneath the West Island Beach access road (Fir Street). Requested funds will be used to hire contractors to correctly size and design a culvert that will maximize tidal exchange with the West Island Beach marsh (without adversely affecting nearby properties), obtain all necessary permits and approvals, develop construction drawings, specifications and bid documents, construct the project, and install an

interpretive sign that recognizes the contribution of the New Bedford Harbor Trustee Council and the project partners.

The Trustee Council has preliminarily approved the idea for possible funding and implementation after consideration of public comment. The Council would be interested in pursuing an expansion of the project through the relocation of the beach parking lot and by removing the fill that was used to create the parking lot and will discuss this alternative with the Town of Fairhaven. Such a project change would require the approval of the Town.

**Classification**

This notice does not contain a collection-of-information requirement subject to the Paperwork Reduction Act. A draft environmental assessment has been prepared which provides further information on the preferred projects and a discussion of those ideas which are not considered preferred projects. The draft environmental assessment is available at the Council office (see **ADDRESSES**) or by accessing the Council's website at <http://www.restorenbh.gov>.

**Authority:** 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: November 1, 2005.

**Garry F. Mayer,**

*Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 05-22237 Filed 11-7-05; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**Performance Review Board (PRB)**

**AGENCY:** United States Patent and Trademark Office.

**ACTION:** Notice; Update membership list of the United States Patent and Trademark Office Performance Review Board.

**SUMMARY:** In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

**ADDRESSES:** Director, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

**FOR FURTHER INFORMATION CONTACT:** James Matthews at (571) 272-6200.

**SUPPLEMENTARY INFORMATION:** The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

*Stephen M. Pinkos*, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2006.

*Vickers B. Meadows*, Vice Chair, Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2007.

*John J. Doll*, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2007.

*Lynne G. Beresford*, Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2007.

*David J. Freeland*, Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2007.

*James A. Toupin*, General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2006.

*Lois E. Boland*, Director of International Relations, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2007.

*Howard N. Goldberg*, Acting Chief Financial Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Term expires September 30, 2006.

Dated: November 2, 2005.

**Stephen M. Pinkos**,

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 05-22279 Filed 11-7-05; 8:45 am]

**BILLING CODE 3510-16-P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 4, 2005.

**AGENCY:** The Committee for the Implementation of Textile Agreements (the Committee).

**ACTION:** Notice.

**SUMMARY:** The Committee is extending through December 31, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton, wool and man-made fiber socks (Category 332/432 and 642 Part).

**FOR FURTHER INFORMATION CONTACT:** Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

#### Background

On July 8, 2005, the Committee received a request from the Domestic Manufacturers Committee of The Hosiery Association, the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, and the National Textile Association requesting that the Committee reapply a twelve-month limit that was established on October 29, 2004, on imports from China of cotton, wool, and man-made socks (Category 332/432 and 632 Part).

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44565 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. On that date, the United States and

China signed an agreement to limit imports of socks from China from November 1 through December 31, 2005. The Committee decided to extend through December 31, 2005, the period for making a determination on this case because of consultations with the Government of China on a broader agreement on textiles.

**James C. Leonard III**,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 05-22359 Filed 11-4-05; 1:14 pm]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 9, 2006.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 2, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Institute of Education Sciences**

*Type of Review:* Revision.

*Title:* Evaluation of the Impact of Literacy Interventions in Freshman Academies—Follow-Up Forms for Students and Teachers.

*Frequency:* Annually.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

Responses: 2,288.

Burden Hours: 2,288.

*Abstract:* The original OMB package requested clearance for the baseline intake and administrative records instruments to be used in the Evaluation of the Impact of Literacy Interventions in Freshman Academies. This package requests clearance for additional follow-up instruments to collect information from teachers and high school ninth-grade students at the end of the school year. The teacher instruments gather data about implementation issues, and the student instrument focuses on student outcomes related to reading attitudes and behaviors. The study has also been expanded to include an additional cohort of students, and thus will examine the impacts of these literacy interventions on student outcomes for two cohorts of students instead of one.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2926. 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](mailto:OCIO_RIMG@ed.gov) or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address [Katrina.Ingalls@ed.gov](mailto:Katrina.Ingalls@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. 05-22195 Filed 11-7-05; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION**

**Submission for OMB Review;  
Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 8, 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: November 2, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Institute of Education Sciences**

*Type of Review:* Extension.

*Title:* Pre-Elementary Education Longitudinal Study (PEELS).

*Frequency:* Varies.

*Affected Public:* Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 6,757.

Burden Hours: 4,597.

*Abstract:* PEELS will provide the first national picture of experiences and outcomes of three- to five-year-old children in early childhood special education. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers.

Requests for copies of the 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 2861. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address [Sheila.Carey@ed.gov](mailto:Sheila.Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-22196 Filed 11-7-05; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 9, 2006.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this

collection on the respondents, including through the use of information technology.

Dated: November 3, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Quarterly Cumulative Caseload Report.

*Frequency:* Quarterly.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 320.

*Burden Hours:* 320.

*Abstract:* State VR agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. This data is used for program, planning, management, budgeting and general statistical purposes.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2840. 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](mailto:OCIO_RIMG@ed.gov) or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address [Sheila.Carey@ed.gov](mailto:Sheila.Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-22271 Filed 11-7-05; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.328M.

*Dates:*

*Applications Available:* November 8, 2005.

*Deadline for Transmittal of Applications:* January 12, 2006.

*Deadline for Intergovernmental Review:* March 12, 2006.

*Eligible Applicants:* Parent organizations, as defined in section III. Eligibility Information in this notice.

*Estimated Available Funds:* The Administration has requested \$25,964,000 for the Training and Information for Parents of Children with Disabilities program for FY 2006, of which we intend to use an estimated \$5,187,290 for the Parent Training and Information Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Information concerning funding amounts for individual States is provided in a chart elsewhere in this notice under section II. Award Information.

*Estimated Average Size of Awards:* \$288,182.

*Estimated Number of Awards:* 18.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* With the exception of Mississippi and Oklahoma, projects will be funded for a period up to 60 months. Mississippi will be funded for a period up to 36 months and Oklahoma will be funded for a period up to 48 months.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 671 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

*Absolute Priority:* For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Parent Training and Information Centers (PTI Centers) Background:* This priority supports parent training and information centers that will provide parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities, with the training and information they need to enable them to participate effectively in helping their children with disabilities to:

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

In addition, a purpose of this priority is to ensure that children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services.

*Text of Priority:* Each Parent Training and Information Center (PTI Center) assisted under this program shall:

(a) Provide training and information that meets the needs of parents of children with disabilities living in the area served by the PTI Center, particularly underserved parents and parents of children who may be inappropriately identified as having a disability when they may not have one, to enable their children with disabilities to:

(1) Meet developmental and functional goals and challenging academic achievement goals established for all children; and

(2) Be prepared to lead productive independent adult lives, to the maximum extent possible;

(b) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA;

(c) Familiarize themselves with the provision of special education, related services, and early intervention services in the areas they serve to help ensure that children with disabilities are receiving appropriate services;

(d) Ensure that the training and information provided meets the needs of

low-income parents and parents of limited English proficient children;

(e) Assist parents to:

(1) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(2) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(3) Participate in decision making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(4) Obtain appropriate information about the range, type and quality of:

(A) options, programs, services, technologies, practices and interventions that are based on scientifically based research, to the extent practicable; and

(B) resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance network and Communities of Practice;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(6) Participate in activities at the school level that benefit their children; and

(7) Participate in school reform activities.

(f) In States where the State elects to contract with the PTI Center, contract with the State educational agencies to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process;

(g) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA;

(h) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law);

(i) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA,

including the resolution session described in section 615(e) of IDEA;

(j) Assist parents in understanding, preparing for, and participating in, the resolution session as described in section 615(f)(1)(B) of IDEA;

(k) Establish cooperative partnerships with other PTI Centers in the State and any Community Parent Resource Centers (CPRCs) in the State funded under section 672 of IDEA;

(l) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 of IDEA and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3) of IDEA;

(m) Annually report to the Assistant Secretary on:

(1) The number and demographics of parents to whom the PTI Center provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and levels of service provided to them;

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities by providing evidence of how those parents were served effectively; and

(3) The number of parents served who have resolved disputes through alternative methods of dispute resolution.

(n) Respond to requests from the National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs) and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues;

(o) If there is more than one PTI Center or one or more CPRC in a particular State, demonstrate in the application how it will coordinate its services and supports with the other center or centers to ensure the most effective assistance to parents in that State;

(p) Budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project. In addition, a project's budget must include funds for the center's project director to attend a Regional Project Directors' meeting to be held each year of the project;

(q) If the PTI Center maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility;

(r) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center;

(s) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for PTI Centers and CPRCs; and

(t) Identify with specificity in its application the special efforts it will make to:

(1) Ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) Work with community based organizations, including those that work with low-income parents and parents of limited English proficient children.

**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 proposed priorities. However, section 681(d) of IDEA makes the public comment requirements in the APA inapplicable to the priority in this notice.

**Program Authority:** 20 U.S.C. 1471.

**Applicable Regulations:** The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

**II. Award Information**

**Type of Award:** Discretionary grants.

**Estimated Available Funds:** The Administration has requested \$25,964,000 for the Training and Information for Parents of Children with Disabilities program for FY 2006, of which we intend to use an estimated \$5,187,290 for the Parent Training and Information Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Information concerning funding amounts for individual States is provided elsewhere in this section of this notice.

**Estimated Average Size of Awards:** \$288,182.

**Estimated Number of Awards:** 18.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** With the exception of Mississippi and Oklahoma, projects will be funded for a period up to 60 months. Mississippi will be funded for a period up to 36 months and Oklahoma will be funded for a period up to 48 months.

In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards in five-year cycles for each State. In FY 2006, applications for 5-year awards will be accepted for the following States: Alaska, Alabama, Colorado, Florida, Kentucky, Maine, Maryland, Nevada, New York, North Dakota, Puerto Rico, Vermont, and Wisconsin. Awards also may be made to eligible applicants in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States; however, maximum funding levels for these areas have not been specified. Applications for a 4-year award will be accepted for Oklahoma and applications for a 3-year award will be accepted for Mississippi.

The Assistant Secretary took into consideration current funding levels and population distribution when determining the award amounts for grants under this competition.

In the following States, one award may be made for up to the amounts listed in the chart to a qualified applicant for a PTI Center to serve the entire State: Alaska, Alabama, Colorado, Kentucky, Maine, Maryland, Mississippi, Nevada, North Dakota, Oklahoma, Puerto Rico, Vermont, and Wisconsin.

To ensure maximum coverage for this competition, the Assistant Secretary has adopted regional designations in Florida and New York, and has identified corresponding maximum award amounts. Regions were identified in Florida and New York by utilizing the educational services breakdown operational within the States. Any applicant that applies for grants for more than one region must complete a separate application for each region. In Florida, up to three awards will be made to qualified applicants for a PTI Center to serve Regions 1 through 3 in the following amounts:

- Region 1—\$100,000.
- Region 2—\$290,000.
- Region 3—\$195,000.

The total of the awards for the three Regions will not exceed the maximum amount listed in the chart included elsewhere in this notice. A list of the counties that are included in each region follows the chart.

In New York, up to three awards will be made to qualified applicants for a PTI

Center to serve Region 1 (the 5 Boroughs of Manhattan) and one award will be made to a qualified applicant for a PTI Center to serve Region 2 (the remainder of the State) in the following amounts:

- Region 1—\$648,554.
- Region 2—\$538,250.

The total of the awards for the two Regions will not exceed the maximum amount listed in the following chart.

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2006**

CFDA number and name	Maximum award (per year)**
84.328M Parent Training and Information Centers*:	
Alaska .....	\$269,820
Alabama .....	280,940
Colorado .....	277,330
Florida .....	585,000
—Region 1—	
\$100,000.	
—Region 2—	
\$290,000.	
—Region 3—	
\$195,000.	
Kentucky .....	253,760
Maine .....	193,350
Maryland .....	297,890
Mississippi .....	244,050
Nevada .....	210,280
New York .....	1,186,804
—Region 1—	
\$648,554.	
—Region 2—	
\$538,250.	
North Dakota .....	210,170
Oklahoma .....	255,566
Puerto Rico .....	278,880
Vermont .....	193,870
Wisconsin .....	449,580

\* Awards may also be made to eligible applicants in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels for these areas have not been specified.

\*\* We will reject any application that proposes a budget exceeding the funding level for a single budget period of 12 months.

**Florida Regions**

**Region 1** includes the following 28 counties: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Liberty, Franklin, Gadsden, Leon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Alachua, Columbia, Baker, Union, Bradford, Gilchrist.

**Region 2** includes the following 30 counties: Nassau, Duval, Clay, St. Johns, Putnam, Flagler, Levy, Marion, Citrus, Sumpter, Volusia, Lake, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, DeSoto, Highlands, Hardee, Okeechobee, St. Lucie, Brevard,

Indian River, Polk, Osceola, Orange, Seminole.

Region 3 includes the following 9 counties: Dade, Broward, Palm Beach, Monroe, Collier, Lee, Hendry, Martin, Glades.

### III. Eligibility Information

1. *Eligible Applicants:* Parent organizations, as defined in section 671(a)(2) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that:

- (a) Has a board of directors:
  - (1) The majority of whom are parents of children with disabilities ages birth through 26;
  - (2) That includes:
    - (i) Individuals working in the fields of special education, related services, and early intervention; and
    - (ii) Individuals with disabilities; and
    - (iii) The parent and professional members of which are broadly representative of the population to be served including low-income parents and parents of limited English proficient children; and
  - (b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements:* (a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

### IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or you may contact ED Pubs at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this

competition as follows: CFDA number 84.328M.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: November 8, 2005.

Deadline for Transmittal of Applications: January 12, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: March 12, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Parent Training and Information Centers-CFDA Number 84.328M is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Parent Training and Information Centers-CFDA Number 84.328M competition at: <http://www.grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this

section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>. To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (see <http://www.Grants.gov/GetStarted>) and provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (portable document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- After you electronically submit your application, you will receive an automatic acknowledgment from

Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

#### *Application Deadline Date Extension in Case of System Unavailability*

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

#### *b. Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention:

(CFDA Number 84.328M), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.328M), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark,

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

- (3) A dated shipping label, invoice, or receipt from a commercial carrier, or

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark, or

- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

#### *c. Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education,

Application Control Center, Attention: (CFDA Number 84.328M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

- (2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not

receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

#### V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

#### VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Training and Information for Parents of Children with Disabilities program. The measures will focus on: The extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Once the measures are developed, we will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects'

performance in annual reports to the Department (34 CFR 75.590).

#### VII. Agency Contact

*For Further Information Contact:*  
Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., room 4059, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7345.

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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363.

#### VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 3, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05-22257 Filed 11-7-05; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children With Disabilities—Community Parent Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.328C.*

**DATES:** *Applications Available:* November 8, 2005.

*Deadline for Transmittal of Applications:* January 3, 2006.

*Deadline for Intergovernmental Review:* March 4, 2006.

*Eligible Applicants:* Local parent organizations, as defined in section III. Eligibility Information in this notice.

*Estimated Available Funds:* The Administration has requested \$25,964,000 for the Training and Information for Parents of Children with Disabilities program for FY 2006, of which we intend to use an estimated \$1,000,000 for the Community Parent Resource Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Average Size of Awards:* \$100,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding \$100,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

#### Full Text of Announcement

##### I. Funding Opportunity Description

*Purpose of Program:* The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

*Priorities:* This competition contains an absolute priority and a competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 672 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

*Absolute Priority:* For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Community Parent Resource Centers*

*Background:* This priority supports community parent training and information centers in targeted communities that will provide underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities in that community, with the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

In addition, a purpose of this priority is to ensure that children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services.

*Text of Priority:* Each community parent resource center assisted under this priority shall—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities within the proposed targeted community to be served by the center, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities when they do not have them;

**Note:** For purposes of this priority, “community to be served” refers to a community whose members experience significant isolation from available sources of information and support as a result of cultural, economic, linguistic, or other circumstances deemed appropriate by the Secretary.

(b) Carry out the activities required of parent training and information centers under section 671(b) of IDEA, which are listed as follows:

(1) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA.

(2) Familiarize themselves with the provision of special education, related services, and early intervention services in the areas they serve to help ensure that children with disabilities are receiving appropriate services.

(3) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children.

(4) Assist parents to—

(A) Better understand the nature of their children’s disabilities and their educational, developmental, and transitional needs;

(B) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(C) Participate in decision making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(D) Obtain appropriate information about the range, type, and quality of—

(1) options, programs, services, technologies, practices and interventions that are based on scientifically based research, to the extent practicable; and

(2) resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs’ (OSEP) technical assistance network and Communities of Practice;

(E) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(F) Participate in activities at the school level that benefit their children; and

(G) Participate in school reform activities.

(5) In States where the State elects to contract with the parent training and information center, contract with the State educational agencies to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process.

(6) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA.

(7) Assist parents and students with disabilities to understand their rights

and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student’s reaching the age of majority (as appropriate under State law).

(8) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including the resolution session described in section 615(e) of IDEA.

(9) Assist parents in understanding, preparing for, and participating in, the resolution session as described in section 615(f)(1)(B) of IDEA;

(c) Establish cooperative partnerships with the parent training and information centers and other community parent resource centers funded in the State under sections 671 and 672 of IDEA;

(d) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support;

(e) Annually report to the Department on—

(1) The number and demographics of parents to whom it provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively;

(f) Respond to requests from the National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs) and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues;

(g) Budget for a two-day Project Directors’ meeting in Washington, DC during each year of the project. In addition, a project’s budget must include funds for the center’s project director to attend a Regional Project Directors meeting to be held each year of the project; and

(h) If the community parent resource center maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility;

(i) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP’s Dissemination Center;

(j) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for the community parent resource centers and the parent training and information centers.

**Competitive Preference Priority:** Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award additional points to an application that meets this priority.

This priority is:  
We will award five points to an application that proposes to provide services to one or more Empowerment Zones, Enterprise Communities, or Renewal Communities that are designated within the areas served by the center. (A list of areas that have been selected as Empowerment Zones, Enterprise Communities, or Renewal Communities can be found at [http://hud.esri.com/egis/cpd/rcezec/ezec\\_open.htm](http://hud.esri.com/egis/cpd/rcezec/ezec_open.htm)) To meet this priority, an applicant must indicate that it will—

(a)(1) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones, Enterprise Communities, or Renewal Communities; or  
(2) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities;

(b) As appropriate, contribute to the strategic plan of the Empowerment Zones, Enterprise Communities, or Renewal Communities and become an integral component of the Empowerment Zone, Enterprise Community, or Renewal Community activities.

Therefore, for purposes of this competitive preference priority, applicants can be awarded up to a total of five points in addition to those awarded under the selection criteria for this competition (see *Selection Criteria* in section V of this notice). That is, an applicant meeting the competitive preference priority could earn a maximum total of 105 points.

**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 proposed priorities. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priorities in this notice.

**Program Authority:** 20 U.S.C. 1472.  
**Applicable Regulations:** The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

#### II. Award Information

**Type of Award:** Discretionary grants.  
**Estimated Available Funds:** The Administration has requested \$25,964,000 for the Training and Information for Parents of Children with Disabilities program for FY 2006, of which we intend to use an estimated \$1,000,000 for the Community Parent Resource Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

**Estimated Average Size of Awards:** \$100,000.

**Maximum Award:** We will reject any application that proposes a budget exceeding \$100,000 award for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Estimated Number of Awards:** 10.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 36 months.

#### III. Eligibility Information

1. **Eligible Applicants:** Local parent organizations. Under section 672(a)(2) of IDEA, a "local parent organization" is a parent organization (as that term is defined in section 671(a)(2) of IDEA) that must meet the following criteria:

(a) Has a board of directors, the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served.

(b) Has as its mission serving parents of children with disabilities from that community who (1) are ages birth through 26, and (2) have the full ranges of disabilities as defined in section 602(3) of IDEA.

Section 671(a)(2) of IDEA defines a "parent organization" as a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be

served including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. **Cost Sharing or Matching:** This competition does not involve cost sharing or matching.

3. **Other: General Requirements—**(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

#### IV. Application and Submission Information

1. **Address to Request Application Package:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: [www.ed.gov/pubs/edpubs.html](http://www.ed.gov/pubs/edpubs.html) or you may contact ED Pubs at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.328C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

**Page Limit:** The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* November 8, 2005.

*Deadline for Transmittal of Applications:* January 3, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

*Deadline for Intergovernmental Review:* March 4, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are

continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Community Parent Resource Centers—CFDA Number 84.328C is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Community Parent Resource Centers-CFDA Number 84.328C competition at: <http://www.grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition

to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (see <http://www.Grants.gov/GetStarted>) and provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (portable document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

#### *Application Deadline Date Extension in Case of System Unavailability*

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in

this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

**b. Submission of Paper Applications by Mail.** If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C), 400 Maryland Avenue, SW., Washington, DC 20202-4260; or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.328C), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark,
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,
- (3) A dated shipping label, invoice, or receipt from a commercial carrier, or
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark, or

- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

**c. Submission of Paper Applications by Hand Delivery.**

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department:

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

- (2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

**V. Application Review Information**

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Training and Information for Parents of Children with Disabilities program. The measures will focus on: The extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Once the measures are developed, we will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Lisa Gorove, U.S. Department of Education, 400 Maryland Avenue, SW., room 4056, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7357.

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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363.

**VIII. Other Information**

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/news/fedregister](http://www.ed.gov/news/fedregister).

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 3, 2005.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 05-22258 Filed 11-7-05; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF ENERGY****Albany Research Center; Notice of Intent To Grant Exclusive or Partially Exclusive Patent License**

**AGENCY:** Department of Energy (DOE), Albany Research Center (ALRC).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of an intent to grant to Harbison-Walker Refractories Co. at Moon Township, Pennsylvania, an exclusive or partially exclusive license to practice the invention described in the U.S. patent number 6,815,386 titled, "Use of Phosphates to Reduce Slag Penetration in Cr<sub>2</sub>O<sub>3</sub>-Based Refractories." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this Notice the Research Marketing Specialist, Department of Energy, Albany Research Center, 1450 Queen Avenue, SW., Albany, OR 97321-2198, receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

**DATES:** Written comments or nonexclusive license applications are to be received at the address listed below no later than fifteen (15) days after the date of this published Notice.

**ADDRESSES:** Paula Turner, Research Marketing Specialist, U.S. Department of Energy, Albany Research Center, 1450 Queen Avenue SW., Albany, OR 97321-2198.

**FOR FURTHER INFORMATION:** Paula Turner, Research Marketing Specialist, U.S. Department of Energy, Albany Research Center, 1450 Queen Avenue SW., Albany, OR 97321-2198; Telephone (541) 967-5966; E-mail: [@turnerp@alrc.doe.gov](mailto:@turnerp@alrc.doe.gov).

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 209(c) provides the DOE with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Harbison-Walker Refractories, a business located at Moon Township, Pennsylvania, has applied for an exclusive or partially exclusive license to practice the invention and has a plan for commercialization of the invention.

The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Dated: October 18, 2005.

**George J. Dooley,**

*Research Director, Albany Research Center.*

[FR Doc. 05-22232 Filed 11-7-05; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Bonneville Power Administration**

[BPA File No.: WP-07]

**2007 Wholesale Power Rate Adjustment Proceeding; Public Hearings, and Opportunities for Public Review and Comment**

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of proposed wholesale power rates.

**SUMMARY:** The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839, provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA.

**ADDRESSES:** 1. Persons wishing to become formal parties to the proceeding must file a petition to intervene notifying BPA in writing of their intention to do so in conformance with the requirements stated in this notice. Petitions to intervene should be directed to Jennifer Sanders, Hearing Clerk, LP-7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or may be e-mailed to the following e-mail address: [jsanders@bpa.gov](mailto:jsanders@bpa.gov), and must be received no later than 5 p.m., Pacific Standard Time, on November 17, 2005. In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Peter J. Burger, LP-7, Office of General Counsel, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or be e-mailed to the following e-mail address: <http://www.pjburger@bpa.gov>. (See Part III (A) for more information.)

2. Non-party participants may submit written comments between November 21, 2005, and February 13, 2006. Comments must be received no later than 5 p.m., Pacific Standard Time, on February 13, 2006, in order to be considered in the draft Record of Decision (ROD). Written comments may be made as follows: in person at the field hearings (see schedule and locations in Part I of this Notice), online at BPA's Web site: [www.bpa.gov/comment](http://www.bpa.gov/comment), or by mail to: BPA Communications, DKP-7, P.O. Box 14428, Portland, OR 97293-4428. Please

identify written or electronic comments as "FY 07-09 Power Rate Case." BPA will consider and address the comments received in the draft ROD.

3. The rate adjustment proceeding will begin with a prehearing conference at 9 a.m., Pacific Standard Time on November 21, 2005, held in the BPA Rates Hearing Room, 2nd Floor, 911 NE 11th Avenue, Portland, OR. BPA will release its 2007 Wholesale Power Rate Case Initial Proposal (WP-07 Initial Proposal) and supporting documents at this prehearing conference. Compact discs (CDs) containing the WP-07 Initial Proposal documents, in PDF format, will be provided to the parties at the prehearing conference. The WP-07 Initial Proposal documents will also be available on BPA's Web site [www.bpa.gov/power/rates](http://www.bpa.gov/power/rates). Due to increased security, attendees should allow additional time to enter the building and sign in at the security desk where photo identification will be required for entry.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jamae Hilliard Creecy, Public Affairs Specialist, Public Affairs Office, DKP-7, P.O. Box 14428, Portland, OR 97293-4428. Interested persons may also call (503) 230-4328 or 1-800-622-4519 (toll-free). Information also may be obtained from:

Ms. Kimberly Leathley, Manager, Financial Management, Rates, and Planning—PF-6, P.O. Box 3621, Portland, OR 97208.

Ms. Elizabeth Evans, Acting Rates Manager—PFR-6, P.O. Box 3621, Portland, OR 97208.

Mr. Garry Thompson, Hub Manager, Mr. Ken Hustad, Senior Customer Account Executive, or Ms. Carol Hustad, Customer Account Executive, Eastern Power Business Area-PSE, 707 W. Main, Suite 500, Spokane, WA 99201.

Mr. John Lebens, Hub Manager, Western Power Business Area—PSW-6, P.O. Box 3621, Portland, OR 97208.

Mr. Larry King, Customer Account Executive, 2700 Overland, Burley, ID 83318.

Mr. C. T. Beede, Customer Account Executive, P.O. Box 40, Big Arm, MT 59910.

Mr. Dan Bloyer, Customer Account Executive, 1011 SW Emkay Drive, Suite 211, Bend, OR 97702.

Mr. Edward Brost, Senior Customer Account Executive, Kootenai Building, Room 215, N. Power Plant Loop, Richland, WA 99352-0968.

Mr. Stuart Clarke, Senior Customer Account Executive, Mr. George Reich, Senior Customer Account Executive, or Ms. R. Kirsten Watts, Customer

Account Executive, 909 First Avenue, Suite 380, Seattle, WA 98104-3636.

Responsible Official: Ms. Elizabeth Evans, Acting Rates Manager, is the official responsible for the development of BPA's wholesale power rates.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. Introduction and Procedural Background
- II. Purpose and Scope of Hearing
- III. Public Participation
- IV. Major Studies and Summary of Proposal
- V. 2007 Wholesale Power Rate Case Schedules and General Rate Schedule Provisions

#### **Part I—Introduction and Procedural Background**

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, publication of this notice of the proposed rates in the **Federal Register** (Notice); one or more hearings conducted as expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views; data requests and responses and argument related to the proposed rates; and a decision by the Administrator based on the record. This proceeding is governed by § 1010, *et seq.*, of BPA's Rules of Procedure Governing Rate Hearings, 51 FR 7611 (1986) (BPA Hearing Procedures). These procedures implement the statutory Section 7(i) requirements.

Section 1010.7 of the BPA Hearing Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and all DOE employees. Except as provided below, any outside communications with BPA and/or DOE personnel regarding BPA's rate case by other Executive Branch agencies, Congress, existing or potential BPA customers (including tribes), and nonprofit or public interest groups are all considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to (1) Matters of procedure only (the status of the rate case, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's final ROD is issued, which is scheduled to occur on July 7, 2006.

The Bonneville Project Act, 16 U.S.C. 832, the Flood Control Act of 1944, 16

U.S.C. 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving and transmitting electric power, including amortization of the Federal investment in the FCRPS over a reasonable period of years, and certain other costs and expenses incurred by the Administrator.

BPA's initial proposed 2007 Wholesale Power Rate Schedules and General Rate Schedule Provisions (GRSPs) are available for viewing and downloading on PBL's Web site at <http://www.bpa.gov/power/ratecase> as discussed in Part V of this Notice. The studies addressing the factors used to develop these rates are listed in Part IV and will be available for examination on November 21, 2005, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE 11th Avenue, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on November 21, 2005, beginning at 9:00 am, Pacific Standard Time, Room 223, 911 NE 11th Avenue, Portland, Oregon.

You may download copies of the studies and documentation from BPA's Web site at <http://www.bpa.gov/power/ratecase> or request them (on a CD or hard copy) by calling BPA's document request line toll-free at: 1-800-622-4519.

BPA will release its WP-07 Initial Proposal and supporting documents on November 21, 2005, and expects to publish a final ROD on July 7, 2006. BPA will be conducting a formal evidentiary rate hearing attended by rate case parties. Interested parties must file petitions to intervene in order to take part in the formal hearing. A proposed schedule for the formal hearing is stated below. A final schedule will be established by the Hearing Officer at the prehearing conference.

November 21, 2005; BPA files Direct Case/Prehearing Conference  
 December 5-9, 2005; Clarification  
 December 9, 2005; Data Request  
 Deadline  
 December 9, 2005; Motions to Strike  
 December 15, 2005; Data Response  
 Deadline  
 December 15, 2005; Answers to Motions to Strike  
 January 6, 2006; Parties file Direct Cases  
 January 17-20, 2006; Clarification  
 January 24, 2006; Data Request Deadline  
 January 24, 2006; Motions to Strike  
 January 30, 2006; Data Response  
 Deadline

January 30, 2006; Answers to Motions to Strike  
 February 13, 2006; Close of Participant Comments  
 February 13, 2006; Litigants File Rebuttal Testimony  
 February 16–17, 2006; Clarification  
 February 17, 2006; Data Request Deadline  
 February 17, 2006; Motions to Strike  
 February 23, 2006; Data Response Deadline  
 February 23, 2006; Answers to Motions to Strike  
 March 6–17, 2006; Cross-Examination  
 April 14, 2006; Initial Briefs Filed  
 April 26–27, 2006; Oral Argument before Administrator  
 May 26, 2006; Draft ROD issued  
 June 9, 2006; Briefs on Exceptions  
 July 7, 2006; Final ROD—Final Studies

BPA will also be conducting six public field hearings in cities throughout the Pacific Northwest. Public field hearings are an opportunity for persons who are not parties in the formal rate hearing to have their views included in the official record. Written transcripts will be made at all of the field hearings. The field hearings have been scheduled to take place at the locations, dates, and times specified below. The hearing dates also will be posted on the rate case Web site ([www.bpa.gov/power/rates](http://www.bpa.gov/power/rates)) and through announcements in local newspapers. Any changes to the scheduled public hearings will be available on the rate case Web site. The BPA Public Affairs Office also may be contacted for this information at the telephone number previously listed.

#### Public Field Hearings Schedule

November 29, 2005; Springfield, Oregon  
 November 30, 2005; Kalispell, Montana  
 December 1, 2005; Spokane, Washington  
 December 5, 2005; Idaho Falls, Idaho  
 December 6, 2005; Tacoma, Washington  
 December 7, 2005; Portland, Oregon

#### Part II—Purpose and Scope of Hearing

##### A. The Overview and Background to this Rate Filing

The WP–07 rate proceeding is designed to establish rates to replace existing rate schedules and GRSPs. One existing rate schedule, the Firm Power Products and Services rate schedule, was established for 10 years in the 1996 Wholesale Power Rate and Transmission Rate Adjustment Proceeding (WP–96/TR–96) and amended in the 1996 Firm Power Products and Services Rate Schedule Correction Proceeding (FPS–96R). The remaining power rate schedules and

GRSPs were established in BPA's 2002 Wholesale Power Rate Adjustment Proceeding (WP–02). All of BPA's power rate schedules expire on September 30, 2006. Accordingly, BPA must conduct a rate case, pursuant to the 7(i) process, in order to comply with its statutory obligations to establish rates to market the power of the FCRPS.

The General Transfer Agreement (GTA) Delivery Charge, was established in the 2006 Transmission Rate Case (TR–06) for the period of October 1, 2005, through September 30, 2007. This power rate case will establish the General Transfer Agreement Delivery Charge for the period of October 1, 2007, through September 30, 2009.

##### 1. Subscription

On December 21, 1998, BPA issued the Power Subscription Strategy and Record of Decision (Subscription Strategy). The Subscription Strategy reflected BPA's position on the equitable distribution of Federal power for the Fiscal Year (FY) 2002–2011 period. The Subscription Strategy was the culmination of a multi-year public process that established BPA's plan for the availability of Federal power post-2001, the products from which customers could choose, along with an outline of the contracts and pricing framework for those products.

The Subscription Strategy provided a marketing framework for the WP–02 power rate case. The WP–02 power rate case developed the rates and rate schedules necessary for the products and contracts that were developed through Subscription. However, the rates established in the WP–02 power rate proceeding applied only to the first five years of the 10-year Subscription contracts. As noted above, the WP–02 power rates applicable to the Subscription contracts are set to expire on September 30, 2006, and must be replaced. The Subscription contracts continue to be the basis for the contractual relationship between BPA and nearly all of its firm power customers.

##### 2. Firm Power Products and Services Rate Schedule

In addition to revising the rates for the Subscription contracts, BPA is proposing the successor to the Firm Power Products and Services (FPS) rate schedule. The FPS rate schedule is available for the purchase of surplus firm power and other products and services for use inside and outside the Pacific Northwest. The FPS rate schedule and associated GRSPs were established for a 10-year period running from October 1, 1996, to September 30,

2006. The rate schedule and GRSPs were slightly modified in 2000 through a 7(i) process (FPS–96R). The FPS rate schedule is used primarily for the sale at negotiated and/or posted rates of surplus firm power and related products. Unless replaced, BPA would lack a rate schedule to sell surplus power in the West Coast wholesale energy markets.

##### 3. Regional Dialogue and the Policy for Power Supply Role for Fiscal Years 2007–2011 (Near-Term Policy)

The Regional Dialogue process began in April 2002 when a group of BPA's Pacific Northwest electric utility customers submitted a "joint customer proposal" to BPA that addressed both near-term and long-term contract and rate issues. Since then, BPA, the Northwest Power and Conservation Council (Council), customers, and other interested parties have worked on these near- and long-term issues. Considering the depth and complexity of many of these issues, BPA concluded it was not practical to resolve all issues before the start of the 2007 rate period. Therefore, BPA determined that it would address the issues in two phases. The first phase of the Regional Dialogue addresses issues that had to be resolved in order to replace power rates that will expire in September 2006. The second phase is expected to be implemented through new power sales contracts and in a future rate case before new power sales contracts go into effect.

BPA issued the Near-Term Policy and Record of Decision on February 4, 2005. The Near-Term Policy has resolved some outstanding issues prior to the start of the 2007 rate period. Those issues include, but are not limited to, the following:

##### a. FY 2007–2011 Rights to Lowest-Cost Priority Firm (PF) Rate

BPA will apply the lowest-cost PF rates to its public agency customers whose contracts contain the lowest-cost PF rate guarantee throughout the remaining term of the Subscription power sales contracts.

##### b. Term of the Next Rate Period

BPA will limit the duration of the next rate period to three years, from FY 2007 through FY 2009.

##### c. Five-Year Contract Holders

Public customers whose contracts do not contain a guarantee of the lowest cost-based PF rates for FY 2007–2011 will receive the same rate treatment in the FY 2007–2011 period as customers whose contracts contain this guarantee, so long as such customers signed a new

contract or amendment by June 30, 2005, extending the term of the agreement through 2011.

d. Product Availability

Any new or existing public customer whose contract expires in 2006 may select from any of the standard products except Complex Partial (Factoring), Block with Factoring, or Slice. In addition, BPA resolved not to offer contract amendments that would allow changes in the power products and services purchased under a customer's 10-year Subscription contract.

e. Service to Residential and Small-Farm Consumers of Investor-Owned Utilities (IOUs)

BPA's Subscription contracts with the region's six IOUs require the agency to provide 2,200 aMW of power or financial benefits to the residential and small-farm consumers of these customers during FY 2007–2011. BPA signed agreements in late May 2004, with all six regional IOUs that provide certainty in the amount and manner that benefits will be provided to their residential and small-farm consumers under their Subscription contracts for 2007–2011. These agreements provide certainty by defining benefits based on a methodology that uses independent market-prices in calculating the financial benefits, and establishing a floor of \$100 million and a cap of \$300 million per year for the financial benefits.

f. Service to Direct Service Industries (DSIs)

BPA determined that it will provide eligible Pacific Northwest DSIs some level of Federal power service benefits, at a known quantity and capped cost, in the FY 2007–2011 period. In the Near-Term Policy, BPA decided that for the FY 2007–2011 period it would continue the ramp-down in DSI service by providing eligible DSI customers some level of service benefits, at a known quantity and capped cost, at rates no lower than rates paid by BPA's public customers, and under contractual terms no better than those offered to other customers. In order to provide an opportunity for additional dialogue with (and among) customers in the hope of achieving consensus for a balanced and durable solution for service to the DSIs, BPA noted in the Near-Term Policy that it reserved for later decision: (1) The actual level of service benefits it would provide; (2) the eligibility criteria it would apply in determining which DSIs would qualify for such service benefits; and (3) the mechanism or mechanisms it would use to deliver those service

benefits. See Section 4, below, for a description of that later decision.

4. Service to DSIs

The Near-Term Policy established parameters for service to the DSIs which were addressed in Bonneville Power Administration's Service to DSI Customers for Fiscal Years 2007–2011 Administrator's Record of Decision (DSI ROD) (June 30, 2005).

In the DSI ROD, BPA determined to offer the aluminum company DSIs power sales contracts for an aggregate 560 aMW of benefits at a capped \$59 million cost. In addition, BPA offered a 17 aMW surplus firm power sales contract for Port Townsend Paper Company through the local public utility under the FPS rate (or the IP rate if viable) at a price approximately equivalent to, but in no case less than, its lowest-cost PF rate.

BPA decided to allocate a share of the 560 aMW service benefits to each DSI aluminum company for purposes of making an initial offer of service, but the creditworthiness of each DSI, on a prospective basis, will determine whether BPA executes a contract with that company. In addition, each DSI aluminum company must demonstrate that it is operational. Because of the financial risks inherent in providing actual power and in order to meet the known and capped cost prerequisite, BPA determined that the default delivery mechanism would be to monetize the value of the below-market power sales to provide service benefits through cash payments. However, BPA retains an option to provide actual power in-lieu of monetizing the transaction.

5. Power Function Review

In January 2005, BPA initiated an extensive and in depth process to examine the PBL's program levels. This Power Function Review (PFR) provided customers and constituent's significant opportunity to provide input into the policy choices that drive program cost projections to be used in BPA's initial power rate proposal. The PFR focused on nine major cost areas:

- a. Army Corps of Engineer and Bureau of Reclamation operation and maintenance costs and capital investments;
- b. Columbia Generating Station operation and maintenance costs and capital investments;
- c. Conservation program costs;
- d. Fish and wildlife program expenses and capital investments;
- e. Internal operations costs charged to power rates;
- f. Renewable program costs;

- g. Transmission acquisition costs;
  - h. Risk mitigation packages and tools;
- and

i. Federal and Non-Federal debt service and debt management.

Two main areas, (1) debt service and debt management and (2) risk mitigation, were discussed but not decided in the PFR. The PFR involved technical staff meetings, management level discussions, and regional public meetings. In total, BPA held seven technical meetings, five formal discussion sessions with utility managers and five regional public meetings that involved general customers, and customer representatives representing customers and constituent groups. During this five-month review, interested persons submitted a total of 94 written comments to BPA about the issues under discussion. At the close of the comment period, BPA issued a draft close-out letter with proposed program cost levels, delineated the consequences and opportunities of further reductions, and sought comment on those proposed levels. BPA received a number of additional written comments on the draft close-out letter. A final close-out letter was issued June 24, 2005. The PFR resulted in \$96 million in reductions per year in forecasted program level cost estimates.

In the close-out letter, BPA responded to the comments provided on the draft and laid out the program level cost estimates that would be used in BPA's WP-07 Initial Proposal. In addition, BPA committed to revisit many of the program areas when more information is known. BPA will hold discussions separately from the rate case proceedings to share the updated forecasts, define associated policy choices, and solicit feedback from customers and constituents before they are incorporated into the final rates.

6. Post-2006 Conservation Program Structure Proposal

In the fall of 2004, BPA established a post-2006 conservation workgroup. The conservation workgroup was composed of over 65 utility representatives and conservation stakeholders. The purpose of the workgroup was to discuss and develop BPA's conservation program for the post-2006 time frame. In January 2005, the workgroup provided BPA with recommendations and comments on how BPA should design its conservation program.

On March 28, 2005, BPA issued its Post-2006 Conservation Program Structure Proposal for review and a 30-day comment period. BPA received 56 comments on the proposal. On June 28,

2005, BPA issued its response to the comments along with its final decision on the design and scope of the Post-2006 proposal.

The proposal described the approach of the conservation programs that BPA will offer during the FY 2007 through 2009 timeframe. The decisions in the Post-2006 proposal have been used as inputs in the development of BPA's WP-07 Initial Proposal.

#### 7. Transmission Rate Case

BPA is committed to marketing its power and transmission services separately in a manner that is modeled after the regulatory initiatives adopted in 1996 by FERC to promote competition in wholesale power markets. The Commission's initiatives in Orders 888<sup>1</sup> and 889<sup>2</sup> directed public utilities regulated under the Federal Power Act to separate their power merchant functions from their transmission reliability functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by law to follow the Commission's regulatory directives that promote competition and open access transmission service, BPA elected to separate its power and transmission operations and unbundle its rates in a manner consistent with the directives concerning open access transmission service. BPA develops its transmission rates in separate proceedings from its power rates.

On February 2, 2005, BPA's Transmission Business Line (TBL) initiated a rate case to establish transmission rates for the FY 2006-2007 transmission rate period. Prior to the initiation of that rate case, TBL held several public meetings with customers over the period July through September 2004 to discuss transmission costs, revenues, and rate design issues for the FY 2006-2007 rate period. The customers expressed interest in meeting with TBL to develop a settlement for the FY 2006-2007 rate period. TBL continued meetings with customers between October and early December 2004, resulting in a Settlement Agreement. TBL's initial rate proposal

reflected the terms of the Settlement Agreement.

On June 20, 2005, BPA issued the Final Transmission Proposal-Administrator's Record of Decision that adopted the transmission and ancillary services rates as reflected in the Settlement Agreement. Final approval of these TBL rates was issued by FERC on September 29, 2005. The TBL rate case settlement established formula rates for ancillary services and some transmission rates that incorporate ancillary services. For FY 2007, these formula rates will be affected by the pricing of generation inputs to ancillary services that will be determined in this PBL rate case. The pricing of generation inputs to ancillary services determined in this rate case also will be a factor in TBL's rates in FY 2008-2009.

#### B. Scope of the 2007 Rate Case

Many of the decisions that guide BPA's power marketing policies have been made or will be made in other public review processes. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the rate case, and those that are outside the scope.

##### 1. Program Level Expenses Decided in the PFR

As described above, the program level expense estimates, except those decided elsewhere, have already received extensive public review and comment in the PFR process. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's revenue requirements for FYs 2007 through 2009. However, as noted above, BPA did commit to revisit many of the program areas where final results were not known at the time the final report was issued and will hold discussion separately from the rate case proceeding to share the updated forecasts, define associated policy choices, and solicit feedback from customers and constituents before they are incorporated into the final rates. Excepted from this direction due to their variable nature, dependency on BPA's rate case models, and/or timing, are: (1) Forecasts of short-term purchase power costs; (2) capital recovery matters such as interest rate forecasts, scheduled amortization, depreciation, replacements, and interest expense; and (3) risk mitigation packages and tools.

##### 2. Near-Term Policy Decisions

As detailed above, BPA issued the Near-Term Policy on February 4, 2005. The Policy resolved a number of policy decisions that impact the design and features of BPA's WP-07 Initial Proposal. Those issues include but are not limited to, decisions on the availability of the lowest cost PF rate to public customers, term of the rate period, IOU and DSI service options, and the availability of products for new or existing customers. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the appropriateness or reasonableness of BPA's decisions made in the Near-Term Policy ROD.

##### 3. DSI Service

The DSI Service decisions finalized and established the manner and method by which BPA would provide service and benefits to its DSI customers. The decisions in that ROD resolved the method and level of service to be provided DSIs in the FY 2007-2011 period. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the appropriateness or reasonableness of BPA's decisions made in the DSI ROD.

##### 4. Transmission Acquisition Expense

In addition to the program cost decisions, the PFR close-out letter also included transmission acquisition program cost level decisions. This program represents the cost associated with services necessary to deliver energy from generating resources to markets and loads. These costs include: transmission expenses; ancillary services; real power losses; generation integration costs associated with the U.S. Army Corps of Engineers and Bureau of Reclamation transmission facilities; and metering and communication requirements. In addition to these decisions, BPA determined the mechanism for modeling the variability in transmission expenses for the upcoming rate period.

Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the

<sup>1</sup> Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities Reg-Preamble, FERC Stats & Regs 1991-96, para. 31,036 (1996).

<sup>2</sup> Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Reg-Preamble, FERC Stats & Regs 1991-96, para. 31,035 (1996).

appropriateness or reasonableness of BPA's transmission acquisition program level estimates or the modeling used to calculate the variability of the transmission expense.

The only issue associated with the transmission acquisition program within the scope of this rate case is the risk analysis associated with modeling the transmission expense. In the PFR close-out letter, BPA agreed to model the transmission expense based on the full distribution of secondary sales rather than the average transmission expense. This issue will be addressed in the risk analysis portion of the rate case.

#### 5. Other Transmission Issues

##### a. Generation Inputs

BPA's Power Business Line (PBL) provides a portion of the FCRPS's available generation to the TBL to enable TBL to meet its various transmission requirements. TBL uses the generation inputs to provide ancillary and control area services. To recover the costs associated with providing these generation inputs, PBL assigns a portion of the FCRPS costs to the transmission function. The cost allocations PBL is proposing to use to determine the generation input costs and associated unit costs to the TBL is a matter that is included within the scope of this rate proceeding.

Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing that seek in any way to revisit the appropriateness or reasonableness of any other issues related to the generation inputs. This includes, but is not limited to, issues regarding the level or quality of the generation inputs that TBL requests from PBL. These determinations are generally made by TBL in accordance with industry, reliability, and other compliance standards and criteria, and are not matters appropriate for the rate case.

##### b. Transmission Rate Case

On June 20, 2005, BPA issued the Final Transmission Proposal ROD in TBL's rate case, which received final approval on September 29, 2005. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek in any way to revisit the appropriateness or reasonableness of issues determined in the TBL rate case. That proceeding

addressed, among other things, transmission and ancillary service rate levels, the \$1.5 million payment from TBL to PBL for Attachment K redispatch for FY 2006–2007, and the GTA Delivery Charge for FY 2007.

#### 6. Post-2006 Conservation Program Structure Proposal

Through the post-2006 workgroup collaboration, customers and constituents provided input on the development of BPA's post-2006 conservation approach. Pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing that seek to in any way revisit the appropriateness or reasonableness of BPA's conservation programs and establishment of expense levels through the Post-2006 Conservation Program Structure Proposal dated June 28, 2005. The Hearing Officer is directed to exclude from the scope of this proceeding evidence regarding BPA's portfolio of conservation programs and the expenses BPA intends to pursue during the upcoming rate period.

#### 7. Federal and Non-Federal Debt Service and Debt Management

During the PFR, and in other forums, BPA provided background information on its internal Federal and non-Federal debt management policies and practices. The discussions of these topics in the PFR and other forums were not intended to seek input from customers and constituents regarding BPA's debt management policies and practices. Rather, these discussions were intended to merely inform interested parties about these matters so that they would better understand BPA's debt structure. Although the PFR close-out letter did not make any decisions regarding BPA's debt management policies and practices, these remain outside the scope of the rate case. Therefore, pursuant to § 1010.3(f) of BPA Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's debt management policies and practices.

#### 8. Potential Environmental Impacts

The Administrator directs the Hearing Officer to exclude from the record all evidence and argument that seek in any way to address the potential environmental impacts of the rates

being developed in the 2007 Wholesale Power Rate Case. See Section C, below.

#### C. The National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects of its WP-07 Initial Proposal, consistent with the National Environmental Policy Act (NEPA). BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995, evaluated the environmental impacts of a range of business plan alternatives that could be varied by applying policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. The Business Plan EIS also addressed response strategies, including adjusting rates that BPA could pursue if BPA's costs exceeded its revenues. In August 1995, the BPA Administrator issued a Record of Decision (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance. Because the WP-07 Initial Proposal likely would assist BPA in accomplishing these goals, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs evaluated in the Business Plan EIS; thus implementation of this rate proposal would not be expected to result in significantly different environmental impacts from those examined in the Business Plan EIS. Therefore, BPA expects that this WP-07 Initial Proposal will fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD.

As part of the Administrator's ROD that will be prepared regarding this 2007 Wholesale Power Rate Case, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may, instead, issue another appropriate NEPA document.

### Part III—Public Participation

#### A. Distinguishing Between “Participants” and “Parties”

BPA distinguishes between “participants in” and “parties to” the 7(i) hearing process. Apart from the formal hearing process, BPA will accept comments, views, opinions, and information from “participants” who are defined in the BPA Hearing Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants’ written and oral comments will be made a part of the official record and considered by the Administrator when making his decision. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties’ witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

The views of the participants are important to BPA. Written comments by participants will be included in the record if they are received by 5 p.m. on February 13, 2006. This date follows the anticipated submission of BPA’s and all other parties’ direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA Communications at the address listed in Section 2 of this Notice. In addition, BPA will hold six field hearings in the Pacific Northwest region. Participants may appear at the field hearings and present oral statements. The transcripts of these hearings will be part of the record upon which the Administrator makes his final rate decisions.

Persons wishing to become a party to BPA’s rate proceeding must notify BPA in writing and file a Petition to Intervene with the Hearing Officer. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to Intervene shall state the name and address of the person requesting party status and the person’s interest in the hearing.

Petitions to Intervene as parties in the rate proceeding are due to the Hearing Office by 5 p.m. on November 17, 2005. The petitions should be directed as stated below or may be e-mailed to the following e-mail address: [jsanders@bpa.gov](mailto:jsanders@bpa.gov): Jennifer Sanders, Hearing Clerk—LP-7, Bonneville Power Administration, 905 NE 11th Avenue, P.O. Box 3621, Portland, OR 97208–3621.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine

whether they have a relevant interest in the proceeding. Pursuant to § 1010.1(d) of BPA Hearing Procedures, BPA waives the requirement in § 1010.4(d) that an opposition to an intervention petition must be filed and served 24 hours before the November 21, 2005, prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored.

#### B. Developing the Record

The record will comprise, among other things, verbal and written comments made by participants, including the transcripts of all hearings, any written material submitted by the parties, documents developed by BPA staff, BPA’s environmental analysis and comments accepted on it, and other material accepted into the record by the Hearing Officer. Written comments by participants will be included in the record if they are received by 5 p.m., Pacific Standard Time, on February 13, 2006. The Hearing Officer will then review the record, supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the entire record, which includes the record certified by the Hearing Officer, as described above. The basis for the final proposed rates first will be expressed in the Administrator’s draft ROD. Parties will have an opportunity to respond to the draft ROD as provided in BPA Hearing Procedures. The Administrator will serve copies of the final ROD on all parties. At the conclusion of the rate proceeding, BPA will file its rates with FERC for confirmation and approval at least 60 days prior to October 1, 2006.

BPA must continue to meet with customers in the ordinary course of business during the rate case. To comport with the rate case procedural rule prohibiting *ex parte* communications, BPA will provide the prescribed notice of meetings involving rate case issues in order to permit the opportunity for participation by all rate case parties. These meetings may be held on very short notice. Consequently, the parties should be prepared to devote the necessary resources to participate fully in every aspect of the rate

proceeding and attend meetings any day during the course of the rate case.

### Part IV—Major Studies and Summary of Proposal

#### A. Summary of Proposed 2007 Wholesale Power Rate Structure

##### 1. List of Proposed 2007 Wholesale Power Rates

BPA is proposing five different rate schedules for its 2007 Wholesale Power Rates. The actual rate schedules and the GRSPs are available for viewing and downloading on PBL’s Web site at [www.bpa.gov/power/ratecase](http://www.bpa.gov/power/ratecase) as discussed in Part V of this Notice.

##### a. PF-07 Priority Firm Power Rate

The PF rate schedule is comprised of two rates: the PF Preference rate and the PF Exchange rate.

The PF Preference rate applies to BPA’s firm power sales to be used within the Pacific Northwest by public bodies, cooperatives, and Federal agencies. This power is guaranteed to be continuously available. The rate applies to the following products:

Full Service Product  
Actual Partial Service Product—Simple  
Actual Partial Service Product—  
Complex  
Block Product  
Block Product with Factoring  
Block Product with Shaping Capacity  
Slice Product

The PF Exchange rate applies to sales of power to regional utilities that participate in the Residential Exchange Program established under Section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c).

##### b. NR-07 New Resource Firm Power Rate

The New Resource Firm Power (NR) rate applies to net requirements power sales to IOUs for resale to ultimate consumers for direct consumption, construction, test, and start-up, and for station service. NR-07 firm power is also available to public utility customers for serving New Large Single Loads. This rate applies to the following products:

New Large Single Loads  
Full Service Product  
Actual Partial Service Product—Simple  
Actual Partial Service Product—  
Complex  
Block Product  
Block Product with Factoring  
Block Product with Shaping Capacity

##### c. IP-07 Industrial Firm Power Rate

The IP rate is available for discretionary firm power sales to DSI

customers authorized by Section (5)(d)(1)(A) of the Northwest Power Act, 16 U.S.C. 839c(d)(1)(A).

d. FPS-07 Firm Power Products and Services Rate Schedule FPS

The FPS rate schedule is available for the purchase of Firm Power, Capacity Without Energy, Supplemental Control Area Services, Shaping Services, and Reservation and Rights to Change Services for use inside and outside the Pacific Northwest. The rates for these products are posted and/or negotiated. BPA is not obligated to enter into agreements to sell products and services under this rate schedule.

e. GTA-07 General Transfer Agreement Delivery Charge

The GTA Delivery Charge applies to customers who purchase Federal power that is delivered over non-Federal low voltage transmission facilities. The rate was set in the 2006 TBL Rate Case Settlement and approved by FERC on September 29, 2005, to mirror the Utility Delivery rate from October 1, 2005, through September 30, 2007. The 2006 TBL Rate Case Settlement set the GTA Delivery Charge at \$1.119 per kilowatt-month through September 30, 2007. For the period of October 1, 2007 through September 30, 2009, PBL is proposing to continue to set the GTA Delivery Charge to the same rate as TBL's posted Utility Delivery rate. As adjustments are made to the Utility Delivery rate in future TBL rate cases, PBL proposes to reflect these changes in the GTA Delivery Charge.

2. Significant Rate Development Issues

a. Risk Mitigation

Several factors present new challenges for BPA to keep its power rates low while fulfilling its mission and meeting its obligations to the U.S. Treasury consistent with sound business principles. Increased market price volatility and six consecutive years of below-average runoff have significantly changed the landscape of risk and uncertainty facing BPA and its stakeholders.

The uncertainty and volatility of market prices are greater today than they have been in the past. As a consequence, the cost of covering the risk BPA faces in crediting a large portion of secondary revenues to power rates before receiving those uncertain funds is now greater. BPA also faces uncertainty around the operational costs for fish programs in FY 2006 and in the FY 2007-2009 rate period. A new Biological Opinion or possible court-ordered change to river operations would directly affect BPA's net

revenues. In addition, enhanced risk management practices resulted in analysis that accounts for operational risks not previously modeled as well as a more comprehensive analysis of non-operating risks. Finally, the \$325 million Fish Cost Contingency Fund (FCCF) was fully depleted in FY 2003 resulting in the loss of a risk tool that was available to mitigate dry year impacts on fish operations.

These changes create greater risk for BPA, reduce BPA's ability to absorb those risks, increase the costs of managing risks, and/or more fully reflect the costs of managing them. If rates were designed using a traditional approach of adding Planned Net Revenues for Risk (PNRR), these changes would require that power rates be set to recover a much larger "risk premium" than ever before in order to meet the Treasury Payment Probability (TPP) standard which, if this was the sole approach to managing risk, would result in a relatively high rate. Additional cash reserves and/or a more comprehensive risk mitigation package, such as the cost recovery adjustment clauses implemented in the FY 2002-2006 rates, are necessary to address these risks and ensure that BPA can maintain its minimum TPP standard of 92.6%<sup>3</sup> for the rate period.

As noted above, BPA faces a level of uncertainty regarding its assumption concerning river operations as well as direct program costs for fish and wildlife due to the ongoing issues surrounding BPA fish and wildlife obligations. To mitigate against this risk, BPA has proposed a specific rate adjustment (NFB adjustment). In order to balance the need to cover risk with overall rate levels, BPA is proposing to meet its TPP standard through a combination of PNRR, cost recovery adjustment charges, the NFB adjustment and a dividend distribution clause. See Sections 3 and 4, below.

BPA has been meeting with customers and the parties over the last year to explore alternative means of managing risk that would allow the TPP standard to be met with lower rates. BPA has committed to continue these discussions over the next several months in properly noticed meetings to continue to pursue the viability of these options in order to include them in the final studies.

<sup>3</sup> 92.6% TPP for a three-year rate period is equivalent to BPA's TPP standard of 95% applied to a two-year rate period. Two years were assumed to be the length of rate periods when the TPP standard was set.

b. Residential Exchange Program Settlement Benefits

Under Residential Exchange Program (REP) settlement agreements executed by BPA and the IOUs in 2000, BPA originally provided the IOUs 1,000 aMW of power benefits and 900 aMW of monetary benefits for the FY 2002-2006 period. Power sales were originally made at the Residential Load (RL) Firm Power Rate and the PF Exchange Subscription rate. Monetary benefits were originally calculated based on the difference between BPA's RL rate and BPA's then-current rate case 5-year flat block price forecast. The benefits increase to 2,200 aMW for the FY 2007-2011 period either in the form of power or monetary benefits, at BPA's discretion. Based on amendments of the REP settlement agreements in 2004, and the Near-Term Policy, however, BPA will not sell power to the IOUs during FY 2007-2011. BPA therefore is not proposing to establish an RL rate or a PF Exchange Subscription rate for IOU power sales in the WP-07 rate case. Instead, all IOU Settlement benefits for the FY 2007-2011 period are monetary benefits calculated based on the difference between an independent determination of a forecast of a forward flat block market price and BPA's flat PF rate, consistent with the IOU contracts.

c. Inter-Business Line Calculations

BPA is addressing certain inter-business line issues in this 2007 Power Rate Case. These include the generation inputs for: generation supplied reactive and voltage support; operating reserves; regulating reserves; generation and energy imbalance; generation dropping for remedial action schemes; and station service. Segmentation of the Corps of Engineers (COE) and the Bureau of Reclamation (Reclamation) facilities will also be addressed. BPA is proposing methodologies to calculate the costs of these services, and forecast revenues, in order to determine BPA's power revenue requirement to be recovered through power rates. These generation costs, or associated unit costs, will be allocated to TBL to support TBL's ancillary services and other operations. Relevant transmission and ancillary service rates for FY 2006-2007 include formulas that allow for the costs and charges developed in this power rate case to be factored into the transmission and ancillary service rates. BPA is also proposing to set a GTA Delivery Charge as determined by the 2006 Transmission rate settlement. This power rate proceeding will establish the GTA Delivery Charge for FY 2008 and 2009.

d. DSI Service 2007–2011

Consistent with the DSI ROD, BPA is not forecasting direct service under the IP rate to the DSI customers. Instead, BPA plans to offer the DSI aluminum smelters 560 aMW of surplus firm power service benefits for the FY 2007–2011 period at a capped cost of \$59 million per year. BPA will offer Port Townsend Paper Company 17 aMW of surplus firm power service benefits, whereupon its local utility will provide power at a utility rate expected to be approximately equivalent to, but in no case lower than, BPA's PF rate. With the DSI aluminum companies, creditworthiness standards must be met or acceptable credit assurances must be provided by those companies qualifying for benefits. In addition, benefits can be monetized under the proposed contracts with these companies, but BPA will retain the right to provide physically delivered surplus power, subject to long-term interruption rights, in lieu of a financial transaction.

3. Changes in Rate Design

BPA is continuing, in general, its existing rate design for its FY 2007–2009 rates, with some changes and modifications as described below. Complete details on these changes are available for viewing and downloading on PBL's Web site at [www.bpa.gov/power/ratecase](http://www.bpa.gov/power/ratecase) as discussed in Part V of this Notice.

a. Conservation Rate Credit (CRC)

BPA is proposing to replace the Conservation and Renewables (C&R) Discount with a Conservation Rate Credit (CRC) program. The CRC will retain many of the features of the C&R Discount including: (1) The credit will remain at 0.5 mills per kWh; (2) monthly bill credits; (3) no decrement to customers' net requirements for CRC participation (including Slice customers); (4) customer flexibility in choosing between several eligible conservation and renewable energy measures; and (5) funding under the CRC for customer renewable resource activities is limited to \$6 million annually.

b. Dividend Distribution Clause (DDC)

BPA is proposing to continue the DDC with a modification to the Threshold. BPA proposes that there will be a DDC if Accumulated Modified Net Revenues (AMNR) reach the equivalent of \$800 million in reserves attributable to PBL.

c. Excess Factoring Charge

This is a charge that applies to purchasers of the Complex Actual Partial Service Product under the PF

rate schedule. BPA is proposing minor changes to eliminate references to the California Power Exchange.

d. Green Energy Premium

BPA is proposing to continue the Green Energy Premium (GEP), available to customers purchasing firm power. The GEP is an adjustment to the PF rate when a customer chooses to designate any portion (up to 100 percent) of its Subscription purchase as Environmentally Preferred Power.

The GEP will range from zero to 40 mills per kWh depending on the specific products and associated costs selected by each customer. BPA forecasts an average of \$1.4 million of annual revenue from the GEP over the rate period. Revenues from the GEP will support BPA renewable resource facilitation and research and development.

e. Load-Based Cost Recovery Adjustment Charge (LB CRAC) True-Up

BPA is not proposing to continue the existing LB CRAC in the FY 2007–2009 rate period. However, the LB CRAC contemplates an after-the-fact true-up as soon as the necessary actual data is available after each sixth-month LB CRAC period. The final LB CRAC True-Up is anticipated to occur in December 2006, after the expiration of BPA's current rates on September 30, 2006. Therefore, BPA is proposing to carry over the LB CRAC True-Up provisions in the GRSPs for the FY 2007–2009 rate period to allow for the final True-Up. Implementation will be limited to the true-up for the final 6 months (LBCRAC10 period) of the 2002–2006 rate period. True-Up billing adjustments will be made over twelve months starting in early 2007.

f. Load Variance Charge

BPA is proposing to continue the Load Variance Charge. This charge covers BPA's cost of meeting customers' load growth for reasons other than annexation or retail access load gain or loss. In addition, it provides Full and Partial Service purchasers the right to deviate from their monthly forecast BPA purchases due to weather, economic business cycles, plant energy consumptions and other reasons. The method for setting the Load Variance charge in this rate proposal differs from the WP-02 rate-setting process. It is no longer based on the cost of put or call options. Instead, load growth is forecast, and the cost is estimated based on a forecast of future market prices. The cost of forecast error is estimated based on an assumption of a two percent forecast error and a forecast of future

market prices. The charge is set at 0.53 mills per kWh and is charged against the customer's Total Retail Load.

g. Low Density Discount (LDD)

BPA is proposing four changes to the LDD: (1) BPA proposes to change the eligibility criteria to account for BPA's separation of power and transmission rates which first occurred in 1996, and also to ensure that customers with very low retail rates will not qualify for the LDD; (2) one of the measures used in calculating the LDD is proposed to use "consumers per mile" instead of "meters per mile" to ensure consistency and equity; (3) the term "average retail rate" has been clarified for simplification of the LDD administration; and (4) BPA proposes to amend LDD to ensure it only applies to the qualifying Slice purchaser's net requirements.

h. Monthly Demand and Energy Charges

BPA is not proposing changes to the methodology for calculating energy charges. There will be two diurnal periods, Heavy Load Hour (HLH) and Light Load Hours (LLH), for each month. BPA is proposing slight changes to the definitions of HLH and LLH to be consistent with NERC definitions. BPA is proposing to revise the definition of HLH and LLH included in the 2006 Transmission General Rate Schedule Provisions for FY 2007 to be consistent with NERC and BPA's proposed definitions in the GRSPs for the power rates. The actual energy charges will be updated consistent with the method used in WP-2002.

BPA is proposing a minor modification to the methodology for calculating the demand charge. There will continue to be 12 monthly demand charges, but the average rate will decrease from \$2.00 per kW-month to \$1.05 per kW-month. This change is to better reflect the market price for demand with energy.

i. PF Targeted Adjustment Charge (PF TAC)

BPA is continuing the Targeted Adjustment Charge, with some proposed modifications. BPA proposes to exempt PF TAC loads from the PF TAC in any year of the three years of the rate period that the load subject to the TAC is less than 1 aMW. The TAC will apply to the entire load if it exceeds the minimum. Also, the calculation of the PF TAC rate will be based on monthly availability of the Federal Base System (FBS), rather than an annual calculation.

j. Unauthorized Increase Charges (UAI) for Power Sales

These are penalty charges for Unauthorized Increases in Energy and Unauthorized Increases in Demand for deliveries that exceed contractual entitlements for energy and demand, respectively. BPA is proposing minor changes to the UAI to eliminate references to the California Power Exchange.

4. New Adjustments in Rates

BPA is proposing a number of new adjustments and continuing some existing adjustments. Complete details of these adjustments are available for viewing and downloading on PBL's Web site at [www.bpa.gov/power/ratecase](http://www.bpa.gov/power/ratecase) as discussed in Part V of this Notice.

a. Operating Reserves

BPA is proposing changes in how it handles its forecasted revenues from providing operating reserves to the TBL. BPA's Open Access Transmission Tariff requires transmission customers serving load with generation located in the Transmission Provider's Control Area to acquire Operating Reserves from the

Transmission Provider, from a third party, or by self-supply. The 2002 power rate case estimated total revenue recovered by PBL selling Operating Reserves generation inputs to TBL, assuming all customers purchased Operating Reserves from TBL. The expected revenue from the sale of Operating Reserves was deducted from the overall revenue requirement when determining the cost of the Federal system which is the basis for calculating power rates. During this current rate period, some customers began self-supplying Operating Reserves, and TBL has purchased less generation inputs from PBL. Therefore, PBL did not fully recover expected revenues. To avoid this under-recovery in the FY 2007–2009 rate period and to ensure that revenues are allocated equitably, PBL is proposing to estimate total revenues from the sale of generation inputs to TBL and give a 0.89 mills per kWh credit on the power bills of customers that elect to purchase Operating Reserves from TBL. This will prevent both under-recovery and over-recovery. While BPA proposes not to allocate these revenues or credits to those

customers that self-supply Operating Reserves or acquire Operating Reserves from a third party, BPA will consider alternatives to this proposal that address BPA's concerns regarding the proper allocation of costs and revenues.

b. Cost Recovery Adjustment Clause (CRAC)

Prior to the beginning of each fiscal year of the rate period (*i.e.*, FY 2007–2009), a forecast of the previous year's end-of-year AMNR will be completed. If the AMNR at the end of the forecast year falls below the defined CRAC Threshold for that fiscal year, the CRAC will trigger, and a rate increase will go into effect beginning in October of the upcoming fiscal year. Any such increase in a fiscal year's rates would remain in effect through September of the following year. This adjustment could occur as early as August 2006 for the rates in effect for FY 2007. The amount of the rate increase is limited to the lower of the annual Maximum Planned Recovery Amount of \$300 million or the amount by which AMNRs under run the threshold.

CRAC ANNUAL THRESHOLDS AND CAPS  
(Dollars in millions)

AMNR calculated at end of fiscal year	CRAC applied to fiscal year	CRAC threshold	Approx. threshold as measured in PBL reserves	Maximum CRAC recovery amount (cap)*
2006 .....	2007	– \$193	\$470	\$300
2007 .....	2008	– 36	500	300
2008 .....	2009	– 45	500	300

c. The NFB Adjustment (National Marine Fisheries Service (NMFS) Federal Columbia River Power System (FCRPS) Biological Opinion (BiOp) Adjustment)

The NFB adjustment results in an upward adjustment to the CRAC Maximum Planned Recovery Amount (Cap) for any year in the rate period if unforeseen fish and wildlife costs arise from a predetermined set of circumstances. The NFB Adjustment calculation will result in an increase in the annual CRAC maximum recovery amount defined in Table A for the next fiscal year following the year the NFB Adjustment was triggered. The NFB Adjustment is applicable to FY 2007–2009. The NFB Adjustment will address increases in financial impacts to the anadromous fish portion of the Fish and Wildlife program only when those impacts result from changes in FCRPS Endangered Species Act (ESA) compliance as required by a court order

(including court-approved agreements), an agreement related to litigation, a new NMFS FCRPS BiOp, or Recovery Plans under the ESA. Financial impacts include foregone revenue, power purchases, direct program expense, fish credits, COE and BOR O&M, and capital repayment. Financial impacts will be calculated net of forecast 4(h)(10)(C) credits. This adjustment would be calculated at the same time that the calculation of the CRAC would be made.

5. Rates With No Proposed Changes

The following is a list of rates or adjustments that BPA proposes to continue with no changes from current rates. Complete details on the rates or adjustments are available for viewing and downloading on PBL's Web site at [www.bpa.gov/power/ratecase](http://www.bpa.gov/power/ratecase) as discussed in Part V of this Notice.

a. Demand Adjuster

This is an adjustment that is made to the demand billing factor for certain requirements products.

b. Flexible PF and NR

These are rate options available, at BPA's discretion, to purchasers under the PF and NR rate schedules.

c. Slice True-Up Adjustment

BPA is not proposing any changes to the methodology used to conduct the Slice True-up. However, BPA does clarify in its proposal how certain costs are treated with the Slice Rate and True-up. These include debt optimization, bad debt expenses, augmentation expenses, Conservation Augmentation, IOU and DSI benefits, and Slice implementation expenses.

d. Value of Reserves

Section 7(c)(3) of the Northwest Power Act, 16 U.S.C. 839e(c)(3),

provides that the Administrator shall adjust rates to the DSI customers "to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers." The DSIs may provide two types of reserves: Supplemental Contingency Reserves and Stability Reserves. The WP-07 Initial Proposal reflects Stability Reserves being purchased by the TBL and addressed in TBL's transmission rate case.

The PBL is proposing in this rate case to continue the approach to procure Supplemental Reserves developed in the WP-02 Rate Case. The PBL will purchase the most cost-effective Supplemental Reserves or provide those reserves itself. No Supplemental Reserves are explicitly forecast to be provided by the DSIs in this rate case. Any payment to the DSIs for Supplemental Contingency Reserves will be negotiated within a specified range on an individual customer basis rather than a credit applied to some or all of BPA's DSI load. The maximum amount PBL may pay is \$6.96 per kW-month.

#### 6. Rates and Adjustments Proposed To Be Discontinued

The following are rates and adjustments that BPA is proposing to discontinue.

##### a. Cost-Based-Indexed IP Rate

BPA does not forecast any sales under this product.

##### b. Cost-Based-Indexed PF Rate

BPA does not forecast any sales under this product.

##### c. Financial-Based Cost Recovery Adjustment Clause (FB CRAC)

BPA is not proposing a FB CRAC for this rate period. See Section 4.b., above, for BPA's risk mitigation.

##### d. Flexible IP

BPA is not proposing a flexible IP rate in the IP rate schedule as BPA does not forecast any sales under the IP rate schedule.

##### e. Industrial Power Targeted Adjustment Charge

BPA is not proposing to continue the industrial power targeted adjustment charge as BPA does not forecast any sales under the IP rate schedule.

##### f. Nonfirm Energy Rate Schedule

BPA is proposing to discontinue the NF rate in this rate proposal as it is no longer used.

##### g. Residential Load Firm Power Rate (RL)

BPA is proposing to discontinue the RL rate in this rate proposal as it is no longer necessary. See Section 2.b. above.

##### h. Safety Net Cost Recovery Adjustment Clause (SN CRAC)

BPA is not proposing a SN CRAC for this rate period. See Section 4.b., above, for BPA's risk mitigation.

##### i. Stepped Rates

BPA is not proposing stepped rates in this rate proposal because this is only a 3-year, not a 5-year, rate period.

##### j. Stepped Up Multi-Year (SUMY) Block Charge

BPA is not proposing a SUMY block charge in this rate proposal.

#### 7. Development of IP Rate/7(c)(2) Adjustment

The IP-07 rate applies to discretionary firm power sales to BPA's DSI customers who purchase under Section 5(d) of the Northwest Power Act, 16 U.S.C. 839c(d). In this rate proposal, BPA is not forecasting any sales to DSIs under the IP rate but, for various reasons, the IP rate is nonetheless being set according to the rate directives contained in Section 7(c) of the Northwest Power Act, 16 U.S.C. 839e(c).

Section 7(c)(1)(B) provides that after July 1, 1985, DSI rates will be set "at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region." 16 U.S.C. 839e(c)(1)(B). Pursuant to Section 7(c)(2), the IP rate is to be based on BPA's "applicable wholesale rates" to its preference customers and the "typical margins" included by those customers in their retail industrial rates. 16 U.S.C. 839e(c)(2). Section 7(c)(3) provides that the IP rate is also to be adjusted to account for the value of power system reserves provided through contractual rights that allow BPA to restrict portions of the DSI load. 16 U.S.C. 839e(c)(3). This adjustment is typically made through a value of reserves credit. Continuing past practice and given current circumstances, BPA will not propose a uniform value of reserves credit to be applied against the IP rate. Thus, the IP rate will be set equal to the applicable wholesale rate, plus a typical margin, subject to the floor rate test. As a final step in rate design, BPA develops monthly and diurnally differentiated energy charges and monthly differentiated demand charges based on allocated costs and

scaled, based on the results of BPA's rate design.

The typical Industrial Margin is 0.573 mills per kWh. As stated above, a zero value of reserves credit is being forecast in this rate case. Thus, the net margin of 0.573 mills per kWh is added to the seasonal and diurnal PF energy charges to produce the initial IP rate charges.

BPA conducts a Section 7(b)(2) rate test as part of its ratemaking process and if the test "triggers," the initial IP rate charges are increased. In the current rate case, the 7(b)(2) rate test does trigger and additional costs are allocated to the IP rate pool, substantially increasing the IP rate charges above their initial PF-plus margin level.

In addition, Section 7(c)(2) of the Northwest Power Act requires that IP rates in the post-1985 period "shall in no event be less than the rates in effect for the contract year ending on June 30, 1985." 16 U.S.C. § 839e(c)(2).

Accordingly, a floor rate test is performed to determine if the IP rate has been set at a level below the floor rate. If so, an adjustment is made that raises the IP rate to recover revenues that would be generated by application of the floor rate. Other customer classes are then credited with the increased revenue generated by application of the floor rate test and any resulting adjustment of the IP rate. If the IP rate has been set at a level above the floor rate, no floor rate adjustment is necessary.

The first step in calculating the floor rate is to apply the IP-83 Standard rate charges to test period (FY 2007-2009) DSI billing determinants. The resulting revenue figure is then divided by total IP test period loads to arrive at an average rate in mills per kWh. This rate is reduced by an Exchange Cost Adjustment and a deferral that were included in the IP-83 rate. Both adjustments are made on a mills per kWh basis.

BPA continues to conduct separate rate cases for power and transmission. Therefore, BPA has removed all transmission costs from the IP-83 rate to make a power-only floor rate comparison. These calculations result in a DSI floor rate of 20.97 mills per kWh. Because the proposed IP rate revenues are greater than the floor rate revenues, no adjustment was necessary.

#### 8. Rate Design and Methodology

##### a. Risk Mitigation Package

PBL is proposing to rely on a number of elements for its risk mitigation package in its WP-07 Initial Proposal. These include a Cost Recovery Adjustment Clause (CRAC), with the

NFB Adjustment and a DDC, as described above, as well as the following:

(1) Starting Reserves. The financial reserves attributable to PBL at the start of the rate period provide some financial protection against the financial uncertainties it faces. Starting financial reserves include the portions attributed to the generation function of cash in the BPA Fund and the deferred borrowing balance. The expected value for starting reserves is currently \$381 million at the beginning of FY 2007.

(2) Other Agency Reserves Temporarily Available for Rate-Setting Purposes. BPA will assume that other agency reserves above the level required to meet the transmission function TPP for FY 2006–2007 can be considered for PBL rate-setting purposes to be temporarily available to PBL in FY 2007 only. BPA will ensure that this will not harm the interests of TBL or its customers.

(3) PNRR. The anticipated generation function reserves, with the tools noted above, are not sufficient for the agency to meet its financial objective of a 92.6 percent TPP. As a result, BPA's risk mitigation package includes some PNRR. PNRR is a dollar amount in the generation revenue requirement that generates additional revenue in order to increase the generation function reserves.

#### b. Rates Analysis Model (RAM)

The RAM2007 model is a large Excel spreadsheet model that is automated with Visual Basic macros. RAM2007 has three main steps: a Rate Design Step; a Subscription Step; and a Slice Separation Step. The RAM2007 Rate Design Step follows BPA's rate directives by determining the costs associated with the three resource pools (FBS resources, Residential Exchange resources, and new resources) used to serve sales load, and then allocates those costs to the rate pools (PF, IP, and NR). After the initial allocation of costs, the Northwest Power Act requires that some rate adjustments be made, such as those described in Section 7(b) and Section 7(c) of the Act. The RAM2007 performs these rate adjustments including the 7(b)(2) rate test in its Rate Design Step. The Rate Design Step of the RAM2007 concludes with the calculation of the "Rate Design Step" rates. At this point in the modeling, all posted rates are still preliminary except for the PF Exchange rate which is set and is then used to calculate the net cost of any public utility exchange. The Subscription Step calculates rates that will include the costs of the IOU Residential Exchange Program (REP)

settlement. The Subscription Step section takes the rates resulting for the Rate Design Step and adjusts them by first subtracting any net cost of the traditional REP for the IOUs that have been included in the Rate Design Step rates, and then adding the costs of the IOU REP settlement. In the Rate Design and Subscription steps, costs were allocated to the various rate pools, including the PF Preference rate pool that contained all firm PF Preference loads. The Slice Separation Step separates out the PF Slice product revenues and firm loads from the overall PF Preference rate pool, leaving the costs that must be covered by the remaining non-Slice product PF Preference load.

#### B. Studies in Support of WP-07 Initial Proposal

The studies that have been prepared to support BPA's 2007 Initial Wholesale Power Rate proposal are described in detail in this section:

Load Resource Study and Documentation (Study about 35 pages, documentation about 120 pages);

Revenue Requirement Study and Documentation (Study about 200 pages, documentation about 450 pages);

Market Price Forecast Study and Documentation (Study about 25 pages, documentation about 400 pages);

Risk Analysis Study and Documentation (Study about 75 pages, documentation about 175 pages);

Wholesale Power Rate Development Study and Documentation (Study about 120 pages, documentation about 600 pages); and

Section 7(b)(2) Rate Test Study and Documentation (Study about 20 pages, documentation about 120 pages).

##### 1. Load Resource Study

The Load Resource Study represents the compilation of the load and resource data necessary for developing BPA's wholesale rates. The Study has three major interrelated components: (a) BPA's Federal system load forecast; (b) BPA's Federal system resource forecast; and (c) the Federal system load and resource balances.

The Federal system forecast is composed of customer and group sales forecasts for public utilities and Federal agencies, IOUs, and other BPA contractual obligations.

The Federal system resource forecast includes power generated by both Federal and non-Federal hydro projects, return energy associated with BPA's existing capacity-for-energy exchanges, contracted resources, and other BPA hydro related contracts. The Federal system hydro resource estimates are

derived from a hydro regulation study that estimates generation under 50 water years conditions using the operating provisions of the Pacific Northwest Coordination Agreement. The seasonal shape and magnitude of the Federal system hydro generation depends on availability of all regional resources and coordination of those resources to meet regional loads.

The projections of Federal system resources are compared with projected Federal system firm loads for each month of Fiscal Years 2007–2009 (October 2007–September 2009) under 1937 water conditions. The resulting load and resource balances yield the firm energy surplus or deficit of the Federal system resources. Similarly, firm capacity surpluses and deficits are determined for the same period.

##### 2. Revenue Requirement Study

The purpose of the Revenue Requirement Study is to establish the level of revenues from wholesale power rates necessary to recover, in accordance with sound business principles, the FCRPS costs associated with the production, acquisition, marketing, and conservation of electric power. Generation revenue requirements include: Recovery of the Federal investments in hydrogeneration, fish and wildlife recovery, and energy conservation; Federal agencies' operations and maintenance expenses allocated to power; capitalized contract expenses associated with such non-Federal power suppliers as Energy Northwest; other purchase power expenses, such as short-term power purchases; power marketing expenses; cost of transmission services necessary for the sale and delivery of FCRPS power; and all other power-related costs incurred by the Administrator pursuant to law.

Cost estimates reflect the results of the Power Function Review and certain components of the Subscription Strategy. The repayment studies reflect updated actual and projected repayment obligations and accommodate the ongoing implementation of BPA's Debt Optimization Program. All new capital investments are assumed to be financed from debt or appropriations. The adequacy of projected revenues to recover rate test period revenue requirements and to recover the Federal investment over the prescribed repayment period is tested and demonstrated for the generation function.

##### 3. Market Price Forecast Study

The Market Price Forecast Study estimates the variable hourly cost of the

marginal resource for transactions in the wholesale energy market. The specific market used in this analysis is the Mid-Columbia trading hub in the State of Washington.

The Market Price Forecast is used for two purposes in BPA's rate case. First, it is the basis for approximating the prices BPA may experience when selling to or buying from the wholesale power market. The Market Price Forecast estimates are therefore used to inform, but not directly set, the price used in BPA's surplus or net secondary revenue forecast. Second, the Market Price Forecast represents BPA's marginal cost in acquiring new energy, or the opportunity cost BPA may see in selling wholesale energy. The Market Price Forecast is therefore used in rate design and to send market-based price signals.

The Market Price Forecast uses a production cost model, AURORA, to estimate a market clearing price for wholesale energy. The fundamental assumption underlying AURORA modeling is the existence of a competitive wholesale energy pricing structure in the Western Electricity Coordinating Council Region. The model dispatches resources in a least cost order to meet a specified demand. Short-term prices are set at the variable cost of the marginal generator. Long-term capital investment decisions are based on economic profitability in an unregulated environment. The study will also forecast independent market-price forecasts used for IOU and DSI benefits.

#### 4. Risk Analysis Study

The Risk Analysis Study focuses upon two types of risks and their impacts on BPA's revenues and expenses. The first class of risks is comprised of operating risks such as variations in economic conditions, load, and generation resource capability. These operating risks include the impacts of water supply conditions, alternative hydro operations, and market prices on net revenues. These operating risks are modeled in the Risk Analysis Model (RiskMod). The second class of risks comprises non-operating risks—all the risks included in the rate case risk modeling other than operating risks. This class of non-operating risks also includes uncertainty in achieving cost reductions identified in the Power Function Review. These risks are modeled in the Non-Operating Risk Model (NORM). The outputs from RiskMod and NORM are combined to develop the distribution of net revenues and cash flows that are required as input by the ToolKit Model.

BPA subsequently evaluates the impact that different risk mitigation measures have on reducing net revenue risk by calculating the TPP. The ToolKit Model assesses the impact that the net revenue deviations have on cash reserve levels, calculates the probability that BPA will make each Treasury payment on time and in full. If the TPP is below BPA's three-year 92.6 percent TPP standard, analysts change the combination of risk mitigation tools (e.g., Cost Recovery Adjustment Clauses, Planned Net Revenues for Risk, Dividend Distribution Clause, etc.) to meet the TPP standard. The amount of PNRR calculated in the ToolKit Model is included in revenue requirements and, thus, affects the level of the rates calculated in the rates analysis model below.

#### 5. Wholesale Power Rate Development Study

The Wholesale Power Rate Development Study (WPRDS) is the primary source for details concerning BPA's power rates. It reflects the results of all of the other studies, documents the Rates Analysis Model, and documents the development of rates for BPA's wholesale power products and services. The WPRDS documents the allocation and recovery of Federal power costs, development of the Slice cost table; the development and forecast of inter-business line revenues and expenses (including Generation Input of Ancillary Services, segmentation of COE/Reclamation Transmission Facilities and GTA Delivery Charge), the development of charges for demand, load variance, unauthorized increase usage, excess load factoring, numerous rate provisions (e.g. the low-density discount, conservation and renewable discount, and rate mitigation), and the development of diurnal energy charges. Notably, one chapter of the WPRDS discusses BPA's risk mitigation package (i.e., the CRAC, NFB Adjustment, and DDC). The results of the WPRDS are the wholesale power rate schedules.

#### 6. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) Customers) for their general requirements for the rate period, plus the ensuing four years (in total, this is known as the test period), are no higher than the costs of power would be to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2)

Customers' wholesale firm power rates from certain costs resulting from provisions of the Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) Customers to other rate classes. The Section 7(b)(2) Rate Test Study describes the application and results of the Section 7(b)(2) Implementation Methodology.

The Section 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The PF Preference rate applied to the general requirements of the 7(b)(2) Customers has been partially reduced by the 7(b)(2) amount. Other rates, including the PF Exchange Program rate applied to customers purchasing under the REP and the IP rate to be charged to any DSI taking direct service from BPA during the rate period, have been increased by an allocation of the 7(b)(2) amount. Because, after allocation of the 7(b)(2) amount, there are no REP loads, no power sales to IOUs, and no direct power sales to DSIs, remaining 7(b)(2) amount costs were allocated to the PF Preference rate. This is required by Section 7(a)(1) of the Northwest Power Act, which provides that BPA's power rates must recover BPA's power costs.

#### V. 2007 Wholesale Power Rate Schedules and General Rate Schedule Provisions (GRSPs)

BPA's proposed 2007 Wholesale Power Rate Schedules and GRSPs are available for viewing and downloading on PBL's Web site at [www.bpa.gov/power/ratecase](http://www.bpa.gov/power/ratecase). A copy of the proposed rate schedules and GRSPs are also available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR.

Issued this 26th day of October, 2005.

**Stephen J. Wright,**

*Administrator and Chief Executive Officer.*

[FR Doc. 05-22233 Filed 11-7-05; 8:45 am]

BILLING CODE 6450-01-P

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#### ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005-0050; FRL-7740-5]

#### Notification of Chemical Exports - TSCA Section 12(b); Request for Comment on Renewal of Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking

public comment on the following Information Collection Request (ICR): Notification of Chemical Exports - Toxic Substances Control Act (TSCA) Section 12(b) (EPA ICR No. 0795.12, OMB Control No. 2070-0030). This ICR involves a collection activity that is currently approved and scheduled to expire on August 31, 2006. The information collected under this ICR relates to reporting requirements found at 40 CFR part 707, subpart D, with respect to companies exporting certain chemicals from the United States to foreign countries. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

**DATES:** Written comments, identified by the docket identification (ID) number OPPT-2005-0050, must be received on or before January 9, 2006.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** 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](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8469; fax number: (202) 564-4775; e-mail address: [schweer.greg@epa.gov](mailto:schweer.greg@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. General Information**

##### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a company that exports or engages in wholesale sales of chemical substances or mixtures. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., basic chemical manufacturing; resin, synthetic rubber and artificial and synthetic fibers and filaments manufacturing; pesticide, fertilizer, and other agricultural chemical manufacturing; paint, coating, and adhesive manufacturing; soap,

cleaning compound, and toilet preparation manufacturing, etc.

- Petroleum refineries (NAICS 32411), e.g., crude oil refining, diesel fuels manufacturing, fuel oils manufacturing, jet fuel manufacturing, kerosene manufacturing, petroleum distillation, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the 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-2005-0050. 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.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit the Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT-2005-0050. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), Attention: Docket ID Number OPPT-2005-0050. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you

send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-2005-0050. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person

### listed under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider when I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### *F. What Information is EPA Particularly Interested in?*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

## **II. What Information Collection Activity or ICR Does this Action Apply to?**

EPA is seeking comments on the following ICR:

*Title:* Notification of Chemical Exports - TSCA Section 12(b).

*ICR numbers:* EPA ICR No. 0795.12, OMB Control No. 2070-0030.

*ICR status:* This ICR is currently scheduled to expire on August 31, 2006.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

**Abstract:** Section 12(b)(2) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6, and/or 7 submit to EPA notification of such export or intent to export. Upon receipt of notification, EPA will advise the government of the importing country of the U.S. regulatory action with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country.

Responses to the collection of information are mandatory (see 40 CFR part 707). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

### III. What are EPA's Burden and Cost Estimates for this ICR?

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

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to be about 0.878 hours per response. The following is a summary of the estimates taken from the ICR:

**Respondents/affected entities:** Companies that export from the United States to foreign countries or that engage

in wholesale sales of chemical substances or mixtures.

**Estimated total number of potential respondents:** 350.

**Frequency of response:** Annually.

**Estimated total/average number of responses for each respondent:** 25.

**Estimated total annual burden hours:** 7,550 hours.

**Estimated total annual burden costs:** \$382,130.

### IV. Are There Changes in the Estimates from the Last Approval?

There is an increase of 100 hours (from 7,450 hours to 7,550 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This increase represents the net effect of an increase in the estimated number of notices sent to EPA and a decrease in the number of firms sending notices, based on EPA's recent experiences with TSCA section 12(b) notices. This increase is an adjustment.

### V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

#### List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 18, 2005.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 05-22253 Filed 11-7-05; 8:45 am]

**BILLING CODE 6560-50-S**

### ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005-0054; FRL-7744-2]

### Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC); Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a meeting of the Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC) on November 30 through December 2, 2005, in Raleigh, NC. This meeting, as with all EDMVAC meetings, is open to the public. Seating is on a first-come basis. The purpose of the meeting is to receive advice and input from the EDMVAC on: EPA's Applied Approach to Validation, OECD Uterotrophic Peer Review Report, Steroidogenesis Using the H295R Cell Line, Avian Studies, and an update on the Pubertal Assays.

**DATES:** The meeting will be held on Wednesday, November 30, 2005, from 8 a.m. to 5 p.m.; Thursday, December 1, 2005, from 8:30 a.m. to 5 p.m.; and Friday, December 2, 2005, from 8:30 a.m. to noon, eastern standard time. Request to attend and/or make public comments in the meeting must be received by EPA on or before November 28, 2005.

Individuals requiring special accommodations at the meeting, including wheelchair access, should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting.

**ADDRESSES:** The meeting will be held at the Holiday Inn Brownstone Hotel and Conference Center, 1707 Hillsborough St., Raleigh, NC 27605; telephone number: (919) 828-0811; e-mail: <http://www.brownstonehotel.com>

Requests to attend and/or make public comments in the meeting may be submitted by e-mail, telephone, fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

Comments may be submitted electronically, by fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Jane Smith, Designated Federal Official (DFO), Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides and Toxic Substances (OPPTS), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8476; fax number: (202) 564-8482; e-mail address: [smith.jane-scott@epa.gov](mailto:smith.jane-scott@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. General Information**

##### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture,

use, consume, work with, or import pesticide chemicals and other substances. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104-170), 21 U.S.C. 346a(p), and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104-182), 42 U.S.C. 300j-17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2005-0054. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. 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 are 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) 566-0282.

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/>. A meeting agenda, a list of EDMVAC members and information from previous EDMVS meetings are available electronically, from the EPA Internet Home Page at <http://www.epa.gov/scipoly/oscpendo/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public

docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

*C. How Can I Request to Attend the Meeting or Submit Comments?*

You may submit a request to attend and/or make public comments in the meeting through e-mail, telephone, fax, or hand delivery/courier. We would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before November 28, 2005. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT-2005-0054 in the subject line on the first page of your request.

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on the topic of this meeting. The EDMVAC will have a period available during the meeting for public comment. It is the policy of the EDMVAC to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVAC expects that public statements presented at its meeting will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

1. *Electronically.* If you submit an electronic request to attend and/or make public comments in the meeting or comments as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your request or comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the request or comment and allows EPA to contact you in case EPA cannot read your request or comment due to technical difficulties or needs further information on the substance of your request or comment. EPA's policy is that EPA will not edit your request or comment, and any identifying or contact information provided in the body of a request or comment will be included as part of the request or comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your request or comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your request or comment.

i. *EPA Docket.* You may use EPA's electronic public docket <http://www.epa.gov/edocket/>, and follow the online instructions for submitting materials. Once in the system, select "search," and then key in docket ID number OPPT-2005-0054. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your request.

ii. *E-mail.* Requests to attend and/or make public comments in the meeting or comments may be sent by e-mail to [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), Attention: Docket ID Number OPPT-2005-0054. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail request directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the request that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM by hand delivery, courier, or package service, such as Federal Express, to the person listed under **FOR FURTHER INFORMATION CONTACT**. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. Do not submit any disk or CD ROM through the mail. Disks and CD ROMs risk being destroyed when handled as Federal Government mail.

2. *Telephone or fax.* Telephone or fax your request to participate in the meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., Washington, DC. Attention: Docket ID Number OPPT-2005-0054. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

**II. Background**

In 1996, through enactment of FQPA, which amended the FFDCA, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an

effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of FACA, to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier I screens) and tests (Tier II tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted almost all of EDSTAC's recommendations in the program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive.

EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM) and other validation groups, as appropriate. EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocrine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA chartered the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The EDMVS convened nine meetings between October 2001 and December 2003. In 2003, NACEPT recommended EDMVS become an Agency level 1 FACA Committee due to the complexity of the recommendations. The EDMVAC was chartered in 2004. The EDMVAC provides independent advice and counsel to the Agency on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate. EDMVAC and previous EDMVS meeting information and corresponding docket numbers are available electronically, from the EPA Internet Home Page at <http://www.epa.gov/scipoly/oscpendo/>. You may also go to the EPA Docket at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting materials.

[www.epa.gov/edocket/](http://www.epa.gov/edocket/), and follow the online instructions for submitting materials.

### III. Meeting Objectives for the November 30–December 2, 2005 Meeting

The objectives for the November 30 through December 2, 2005 meeting (docket ID number OPPT–2005–0054) are to review and discuss: EPA's Applied Approach to Validation, Uterotrophic (Tier I Assay, OECD) Peer Review Report, Steriogenesis (Tier I Assay) Using the H295R Cell Line, Avian 2–Generation (Tier II Assay, OECD) and receive an update on the Pubertal (Tier I) Assays.

A list of the EDMVAC members and meeting materials are available at <http://www.epa.gov/scipoly/oscpendo/> and in the public docket.

#### List of Subjects

Environmental protection, Endocrine disruptors, Hazardous substances, Health, Safety.

Dated: October 27, 2005.

#### Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–22229 Filed 11–7–05; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0008; FRL–7741–5]

### Workshops on How to Report for the 2006 Inventory Update Rule (IUR) Information Collection - Fall 2005; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is convening two public workshops to provide training for affected parties responsible for reporting during the 2006 Inventory Update Rule information collection. The workshops will focus on the Instructions for Reporting, industry case studies, and submission of IUR data over the internet. The Instructions for Reporting were revised in response to amendments to 40 CFR Part 710 promulgated on January 7, 2003. These workshops are open to the public.

**DATES:** Each workshop will take place over 1 day. These workshops will begin at approximately 8:30 a.m. and end at 4:30 p.m. The workshops will be held in Fall 2005: Washington, DC (December 5); Los Angeles, CA (December 12).

**ADDRESSES:** Persons planning to attend the workshops are directed to the IUR website @ [www.epa.gov/oppt/iur/](http://www.epa.gov/oppt/iur/). This website contains workshop information, as well as IUR background information, draft documents, and a link to the workshop registration site. All workshop materials can be downloaded from the IUR website or the EPA electronic docket [www.epa.gov/edocket](http://www.epa.gov/edocket) (Docket Identification Number: OPPT–2005–0008) in portable document format (PDF).

**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](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Franklyn Hall, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460–0001; telephone number: (202) 564–8522; e-mail address: [hall.franklyn@epa.gov](mailto:hall.franklyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture chemical substances currently subject to reporting under the Inventory Update Rule (IUR) as amended on January 7, 2003 and codified as 40 CFR part 710. Persons who process chemical substances but who do not manufacture or import chemical substances are not required to comply with the requirements of 40 CFR part 710. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers and importers currently subject to IUR reporting, including manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any

questions regarding the applicability of this action to a particular entity, consult the technical contact 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-2005-0008. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background

The U.S. Environmental Protection Agency is convening two workshops to train stakeholders on how to report for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. The EPA is required by section 8(b) of the Toxic Substances Control Act (TSCA) to compile and update an inventory of chemical substances manufactured or imported into the United States. Every

four years, manufacturers (including importers) of certain chemical substances on the Chemical Substance Inventory have been required to report data specified in the TSCA section 8(a) Inventory Update Rule (IUR), 40 CFR part 710. Past updates included information on the chemical's production volume, site-limited status, and plant site information. Amendments to the IUR promulgated in the **Federal Register** on January 7, 2003 (68 FR 848) (FRL-6767-4) expanded the data reported on certain chemicals to assist EPA and others in screening potential exposures and risks resulting from manufacturing, processing, and use of TSCA chemical substances. At the same time, EPA amended the IUR regulations to increase the production volume threshold which triggers reporting requirements from 10,000 pounds per year to 25,000 pounds per year and established a new higher threshold of 300,000 pounds per year above which manufacturers must report additional information on downstream processing and use of their chemical substances. The 2003 amendments to the IUR also revoked the exemption from reporting for inorganic chemical substances, provided a partial exemption from reporting of processing and use information for chemical substances of low current interest, and continued the current exemption from reporting for polymers, microorganisms, and naturally occurring chemical substances. These changes modify requirements for information collected in calendar year 2005 and submitted in 2006 and thereafter. These workshops may be of interest to persons currently reporting under the IUR and to manufacturers of inorganic chemical substances.

The workshops will include a series of presentations by representatives of EPA on the Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. Subjects discussed will include reporting requirements, instructions for completing the reporting form, how to assert confidentiality claims, how to submit completed reports to EPA, and case studies illustrating different aspects of reporting. During the workshops, persons in attendance will be able to ask questions regarding the material being presented. The purpose of these meetings is to provide training to persons who must report in 2006 under the Inventory Update Rule.

## III. How Can I Request to Participate in this Meeting?

You may register to participate in this meeting by directing your web browser

to [www.epa.gov/oppt/iur](http://www.epa.gov/oppt/iur). There is a workshop registration link on this website that will allow you to provide all necessary information for participation. There is no charge for attending this public meeting.

## List of Subjects

Environmental protection, chemicals, reporting and record keeping requirements.

Dated: November 2, 2005.

**Wendy C. Hamnett,**

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 05-22230 Filed 11-7-05; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7994-5]

### Notice of Availability of Draft NPDES General Permit for Small Municipal Separate Storm Sewer Systems in the Commonwealth of Puerto Rico and Federal Facilities in the Commonwealth of Puerto Rico

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Draft NPDES General Permits—PRR040000 and PRR04000F.

**SUMMARY:** The Director of the Caribbean Environmental Protection Division (CEPD), Environmental Protection Agency—Region 2 (EPA), is issuing Notice of a Draft National Pollutant Discharge Elimination System (NPDES) general permit for discharges from small municipal separate storm sewer systems (MS4) to waters of the Commonwealth of Puerto Rico. This draft NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions and management practices for discharges of storm water from municipal separate storm sewer systems. Owners and/or operators of small MS4s that discharge storm water will be required to submit a NOI to EPA-CEPD to be covered by the general permit and will receive a written notification from EPA-CEPD of permit coverage and authorization to discharge under the general permit. The eligibility requirements are discussed in the draft permit. The municipality must meet the eligibility requirements of the permit prior to submission of the NOI. This general permit does not cover new sources as defined under 40 CFR 122.2.

**DATES:** Public comments are due by midnight on February 6, 2006. The general permit shall be effective on the

date specified in the final general permit published in the **Federal Register** and will expire five years from the date that the final permit is published in the **Federal Register**. Within the comment period, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided below for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing.

**ADDRESSES:** The draft permit is based on an administrative record available for public review at EPA—Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907-4127.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the draft permit may be obtained between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday excluding holidays from: Sergio Bosques, Caribbean Environmental Protection Division, Environmental Protection Agency, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907-4127; telephone: 787-977-5838; e-mail: [bosques.sergio@epa.gov](mailto:bosques.sergio@epa.gov).

**SUPPLEMENTARY INFORMATION:** This general permit covers storm water discharges from small municipal separate storm sewer systems meeting the definition of “small municipal separate storm sewer system” at 40 CFR 122.26(b)(16) and designated under 40 CFR 122.32(a)(1) or 40 CFR 122.32(a)(2). Designation under 40 CFR 122.32(a)(1) applies to small MS4s located in an urbanized area. Designation under 40 CFR 122.32(a)(2) applies to small MS4s determined to need a permit by the Director. A small MS4 is a conveyance or system of conveyances—including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains. This system must be owned or operated by a municipality. A municipality includes the following entities: *The United States, a State, city, town, borough, county, parish, district, association, or other public body*

*(created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes including special districts under State law such as a sewer, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.* A Fact Sheet sets forth principal facts and the significant factual, legal, and policy issues considered in the development of the draft permit. To obtain a paper copy of the documents, please contact Sergio Bosques using the contact information provided above.

When the general permits are issued, the notice of final issuance will be published in the **Federal Register**. The general permits shall be effective on the date specified in the notice of final issuance of the general permits published in the **Federal Register** and will expire five years from the effective date of the permit.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 30, 2005.

**José C. Font,**

*Acting Director, Caribbean Environmental Protection Division, EPA Region 2.*

[FR Doc. 05-22252 Filed 11-7-05; 8:45 am]

**BILLING CODE 6560-50-P**

## FARM CREDIT ADMINISTRATION

### Privacy Act of 1974; Altering a System of Records

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of altering a system of records maintained on individuals; request for comments.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Administration (FCA) is publishing an amended system notice pertaining to financial management records. The system notice provides information on the existence and character of the system of records. This amended system notice reflects minor changes, which clearly identify the types of Agency records maintained in this system, the purposes for this system of records, and the sources of information.

**DATES:** Written comments should be received by December 8, 2005. This notice will become effective without further publication on December 23, 2005, unless modified by a subsequent notice to incorporate comments received from the public.

**ADDRESSES:** Mail written comments to Debra Buccolo, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102-5090. You may send comments by e-mail to [buccolod@fca.gov](mailto:buccolod@fca.gov). Copies of all communications received will be available for examination by interested parties in the offices of the FCA.

**FOR FURTHER INFORMATION CONTACT:**

Debra Buccolo, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4022, TTY (703) 883-4020, or Jane Virga, Office of General Counsel, Farm Credit Administration, McLean, Virginia, 22102-5090, (703) 883-4071, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:** This publication satisfies the requirement of the Privacy Act of 1974 that an agency publish a system notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The FCA did not file a System Report with Congress and the Office of Management and Budget because the changes were minor. There were no significant changes to this system of records. The amended system notice reflects minor changes, which clearly identify the types of Agency records maintained in this system, the purposes for this system of records, and the sources of information.

The amended system of records is: FCA-2, Financial Management Records. The notice is published in its entirety below.

#### FCA-2

**SYSTEM NAME:**

Financial Management Records—FCA.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090 and field offices listed in Appendix A.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former FCA employees and persons that provide or may provide supplies or services to FCA by contract or purchase order.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains paper files and a computerized database supporting the FCA financial management system, including: Employee travel advance records; travel vouchers; vendor vouchers and purchase orders; requisitions; FCA administrative

expenses; collections; purchase, travel, and fleet credit cards; and other pertinent written information related to financial records and purchase transactions. Also included are bids, offers, and lease agreements.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**  
12 U.S.C. 2243, 2252; 40 U.S.C. 471 *et seq.*

**PURPOSE(S):**  
We use information in this system of records to provide records of reimbursement to and collections from employees for expenses incurred while in official travel status, to provide payments to vendors and other Government agencies, to maintain control over the collection and disbursement of Agency funds and to limit the opportunity for fraud, to prepare reports for management and other Government agencies, to obtain necessary information for the issuance and payment of credit cards, and to assist in any audits of purchases of supplies and services.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See the "General Statement of Routine Uses."

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**  
None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**  
We maintain records in file folders or on a computerized database.

**RETRIEVABILITY:**  
We arrange file folders by: (1) SF 1166a (Voucher and Schedule of Payments) voucher number within each year, (2) employee name, (3) purchase order number or contract number, or (4) name of the vendor. We retrieve information on the computerized database by employee name, vendor number, or Social Security Number, as applicable.

**SAFEGUARDS:**  
We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

**RETENTION AND DISPOSAL:**  
In accordance with National Archives and Records Administration General Records Schedule requirements for financial records and procurement records.

**SYSTEM MANAGER(S) AND ADDRESS:**  
Director, Office of Management Services, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

**NOTIFICATION PROCEDURE:**  
Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

**RECORD ACCESS PROCEDURES:**  
To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, as provided in 12 CFR part 603.

**CONTESTING RECORD PROCEDURES:**  
Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, as provided in 12 CFR part 603.

**RECORD SOURCE CATEGORIES:**  
Information in this system of records comes from: (1) The individual to whom the record applies; (2) persons, corporations, or governmental entities that make bids or offers to FCA or enter into leases or other agreements with FCA; (3) credit reporting agencies, and (4) FCA employees who prepare or audit contractual actions.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**  
None.  
Dated: November 1, 2005.  
**Jeanette C. Brinkley,**  
*Secretary, Farm Credit Administration Board.*  
[FR Doc. 05-22083 Filed 11-7-05; 8:45 am]  
**BILLING CODE 6705-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**  
**Sunshine Act Meeting; Deletion of Agenda Item From November 3, 2005, Open Meeting**  
November 3, 2005.

The following item has been deleted from the list of Agenda items scheduled for consideration at the Thursday, November 3, 2005, Open Meeting and previously listed in the Commission's Notice of Thursday, October 27, 2005.

Item No.	Bureau	Subject
3	Media .....	Title: Digital Television Distributed Transmission System Technologies. Summary: The Commission will consider a Clarification Order and Notice of Proposed Rulemaking to clarify the interim policy and propose rules for the use of distributed transmission system ("DTS") technologies by digital television stations.

Federal Communications Commission.  
**Marlene H. Dortch,**  
*Secretary.*  
[FR Doc. 05-22351 Filed 11-4-05; 12:22 pm]  
**BILLING CODE 6712-01-P**

**FEDERAL RESERVE SYSTEM**  
**Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies**  
The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).  
The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than November 22, 2005.  
**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:  
*1. Bill Don Pittman and Ginger Pittman,* Spearman, Texas; to acquire additional voting shares of Spearman Bancshares, Inc., Spearman, Texas, and thereby indirectly acquire additional voting shares of Spearman Financial Corporation, Dover, Delaware, and First National Bank, Spearman, Texas.

Board of Governors of the Federal Reserve System, November 2, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E5-6169 Filed 11-7-05; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2005.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *First Banks, Inc.*, Hazelwood, Missouri, and The San Francisco Company, San Francisco, California; to acquire 100 percent of the voting shares of First National Bank of Sachse, Sachse, Texas.

**B. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Frontier Holdings, LLC*, Omaha, Nebraska; to merge with Frontier Bancorp, Davenport, Nebraska, and thereby indirectly acquire voting shares of Frontier Bank, Davenport, Nebraska.

Board of Governors of the Federal Reserve System, November 2, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E5-6170 Filed 11-7-05; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

[File No. 051-0050]

### Johnson & Johnson; Analysis of Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 1, 2005.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Johnson & Johnson, File No. 051-0050,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with the applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Michael R. Moiseyev, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3106.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 2, 2005), on the World Wide Web, at <http://www.ftc.gov/os/2005/11/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

### Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Johnson & Johnson ("J&J"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from J&J's acquisition of Guidant Corporation ("Guidant"). Under the terms of the proposed Consent Agreement, J&J is required to (a) grant to a third party a fully paid-up, non-exclusive, irrevocable license, enabling that third party to make and sell drug-eluting stents ("DESs") with the Rapid Exchange ("RX") delivery system, (b) divest to a third party J&J's endoscopic vessel harvesting ("EVH") product line, and (c) terminate its agreement to distribute the proximal anastomotic assist device ("AAD") of Novare Surgical System, Inc. ("Novare").

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated December 15, 2004, J&J proposes to acquire Guidant in exchange for cash and voting securities in a transaction valued at approximately \$25.4 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by removing an imminent competitor from the U.S. market for DESs and by lessening competition in the U.S. markets for EVH devices and proximal AADs. The proposed Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in these markets as a result of the acquisition.

J&J is a comprehensive and broadly-based manufacturer of products related to all aspects of human health care. In 2004, J&J generated global sales of \$47.3 billion and U.S. sales of \$27.7 billion. J&J is divided into three business segments: Consumer, Pharmaceutical, and Medical Devices and Diagnostics. The products impacted by the proposed

transaction, DESs, EVH devices, and proximal AADs, fall within J&J's Medical Devices and Diagnostics segment.

Guidant manufactures products in three broad business units: cardiac rhythm management, vascular intervention, and cardiac surgery. In 2004, Guidant's sales were \$3.8 billion globally and \$2.53 billion in the United States. Guidant's DES program is part of its vascular intervention business unit, and the company's EVH device and proximal AAD are part of the cardiac surgery business unit.

### Drug-Eluting Stents

A DES is a medical device typically consisting of a thin, metallic stent coated with an antiproliferative drug and a polymer, mounted on a delivery system. Interventional cardiologists use DESs to treat coronary artery disease, a condition caused by the build up of plaque deposits within one or more coronary arteries leading to reduced blood flow. DESs work by propping open the clogged artery or arteries and eluting a drug, which helps prevent the re-narrowing of the artery, called restenosis. DESs are the most effective minimally-invasive method for treating coronary artery disease, and other products and procedures are not economic substitutes for DESs.

DESs are sold mounted on a delivery system used to deploy the DES to the blocked area of the coronary artery. The two most common types of delivery system in the United States are over-the-wire and Rapid Exchange ("RX"). Over-the-wire delivery systems employ a long guidewire and require two operators to implant the DES. In contrast, the RX delivery system employs a shorter guidewire that can be handled by a single operator. RX delivery systems currently are highly preferred by physicians in the United States and are increasing in popularity. Boston Scientific Corporation and Guidant own the intellectual property rights to the RX delivery system in the United States. The companies have cross-licensed each other, and J&J has access to the RX delivery system through an agreement with Guidant. Both DESs currently on the market, J&J's Cypher<sup>®</sup> and Boston Scientific's Taxus<sup>®</sup>, are available on the RX delivery system.

The relevant geographic market in which to analyze the effects of the proposed acquisition on the DES market is the United States. DESs are medical devices that are regulated by the United States Food and Drug Administration ("FDA"). Performing the necessary clinical testing and navigating the approval process for the FDA can be

burdensome and time-consuming. As such, DESs sold outside of the United States but not approved for sale in the United States do not provide viable competitive alternatives for U.S. consumers.

The U.S. market for DESs is highly concentrated; currently only two firms, J&J and Boston Scientific, have products on the market. Guidant's DES program is still in development, but it is anticipated to be one of at least three entrants, along with Medtronic, Inc. and Abbott Laboratories, likely to enter the U.S. market by the end of 2007. Guidant is the only anticipated entrant with rights to the intellectual property necessary to market a DES with the RX delivery system, the dominant delivery system in the United States.

Developing and receiving FDA approval for a DES is difficult, time-consuming and expensive. It can take hundreds of millions of dollars of research and development, significant funding for clinical trials, and an extensive amount of time to even reach the stage of seeking FDA approval. The regulatory process itself can also be time-consuming as the FDA reviews the volumes of materials and data a company submits in support of its application for approval. Considering all these factors, entry into the manufacture and sale of DESs is impossible to achieve within two to three years.

In addition to the regulatory barriers facing firms seeking to enter the DES market, there are substantial intellectual property barriers an entrant must overcome. Firms must invent around or obtain licenses to patents covering nearly every aspect of a DES, including the design of stents, stent delivery systems, and the drugs and polymers used on DESs. Due to the difficulty of entry, firms must commit to entering the market years in advance of any anticipated entry, and timely and sufficient entry in response to a small but significant price increase is impossible.

The proposed acquisition would cause significant competitive harm in the market for DESs by eliminating Guidant as the only potential competitor with the ability to offer a DES on an RX delivery system. As a third RX entrant into the DES market, Guidant likely would increase competition and reduce prices for DESs. Although two other firms, Abbott and Medtronic, are poised to enter the market in the same approximate time frame as Guidant, their lack of access to the RX delivery system makes it unlikely that either company could be a substantial competitive constraint on the DES market in the near term. The proposed

acquisition therefore decreases the number of potential DES suppliers with access to the RX delivery system from three to two until at least late 2008, when Guidant's key patents relating to the RX delivery system begin to expire. (The relevant Boston Scientific RX patents begin to expire this year).

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the market for DESs. Pursuant to the proposed Consent Agreement, the combined J&J/Guidant is required to license Guidant's intellectual property surrounding the RX delivery system at no minimum price to an up-front buyer with a DES program in development no later than ten (10) days after the acquisition is consummated. Through the course of the investigation, Commission staff gathered a great deal of information about each of the companies developing DES products. In particular, staff investigated potential divestiture candidates and concluded that Abbott was among the companies well-positioned to replicate the competitive impact Guidant was likely to have absent the proposed acquisition. The parties have selected Abbott as the up-front buyer for the divestiture package. Abbott is a well-known and respected pharmaceutical and diagnostics company that has a number of vascular devices on the market already or in development. It has experience with both drugs and vascular devices, a highly regarded DES design, a strong and growing vascular sales force, and the necessary manufacturing capabilities. Abbott, therefore, is poised to become a strong competitor in the DES market when it enters in the second half of 2007, approximately the same time as Guidant's anticipated date of entry. Access to the RX delivery system will allow Abbott to replace Guidant as the third entrant into the DES market with an RX delivery system.

The Commission's merger remedies are intended to maintain or to restore the competitive status quo. The Commission does not, as a matter of course, seek to "improve" on pre-transaction competition. Based on the evidence gathered in the investigation, the Commission has determined that the license to Abbott should replicate the competitive conditions in DESs that existed prior to the proposed transaction between J&J and Guidant. As a result, a Commission order requiring licenses to additional parties is not necessary.

Given the uncertainty inherent in a development program, the RX license contemplated by the proposed Consent Agreement is transferable, so that if Abbott's DES program is not successful,

it will have the incentive and ability to transfer the RX license to another firm developing a DES, ensuring that a successful third DES firm is able to enter the market with an RX delivery system in the relevant timeframe. The proposed Consent Agreement also requires the parties to enter into a covenant not to sue Abbott in relation to certain intellectual property rights regarding stent design, stent coating and the use of certain drugs on a stent.

#### **Endoscopic Vessel Harvesting Devices**

EVH devices are used in coronary artery bypass graft ("CABG") surgery to remove a patient's leg vein, arm artery, or other blood vessel that is then used as a conduit to bypass one or more blocked coronary arteries. EVH devices allow for a minimally-invasive procedure requiring only one to three small incisions. EVH has several clinical benefits over the other methods of vessel harvesting (the open method and bridging) both of which are much more invasive, leave large, unsightly scars and carry a greater risk of infection. Surgeons and physician's assistants would not switch to these other methods of vessel harvesting even if the price of using EVH devices increased by five to ten percent.

As with DESs, the United States is the relevant geographic market in which to analyze the effects of the proposed acquisition on the EVH device market. EVH devices are also medical devices subject to regulation by the FDA. Receiving FDA approval to market an EVH device in the United States can be a lengthy process, but is necessary in order to sell the devices in the United States. EVH devices sold outside of the United States but not approved by the FDA for sale in the United States therefore do not provide viable competitive alternatives for U.S. consumers.

The U.S. market for EVH devices is highly concentrated with J&J and Guidant as the only competitors until very recently, when Terumo Corporation entered. Guidant currently dominates the market with over eighty percent market share. Terumo received FDA approval for its device in January, 2005 and has yet to generate significant sales.

Firms seeking to enter the market for EVH devices face regulatory hurdles and significant intellectual property barriers, both of which make entry into the market for EVH devices in the next two to three years highly unlikely. In addition, while the use of EVH devices in CABG surgery is increasing, the number of overall CABG surgeries appears to be decreasing due to, among

other things, the increase in stenting procedures; this steady decline in the number of CABG procedures being performed in the United States makes it less likely that firms would choose to enter the EVH device market in response to a modest increase in the price of the devices.

The proposed acquisition would constitute a virtual merger to monopoly in the market for EVH devices and is likely to lead to increased prices and decreased innovation in the market for those devices. Until recently, Guidant and J&J were the only two firms to offer an EVH device in the United States, and while Terumo recently entered, it is likely that it will take several years before Terumo's device has a significant impact on the market for EVH devices.

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the market for EVH devices by requiring J&J to divest its EVH product line to a Commission-approved buyer at no minimum price. J&J has reached an agreement to divest the EVH business to Datascope. Datascope, a diversified medical device company, has a line of products used in cardiac surgery, including products used in CABG procedures. Pursuant to the Consent Agreement, J&J is required to accomplish the divestiture of its EVH product line no later than fifteen (15) business days after the acquisition is consummated.

The proposed Consent Agreement permits the Commission-approved buyer of the EVH product line assets to enter into a supply agreement with J&J for a period of up to two (2) years. The supply agreement may be necessary because of the need to recreate or move manufacturing and/or packaging equipment and to allow time for the acquirer to receive approval from the FDA to begin manufacturing and/or packaging EVH device kits in its own facility. This supply agreement may also be necessary to allow J&J to supply certain components of the EVH devices until the acquirer is able to procure similar components from third-party vendors.

In addition, the proposed Consent Agreement permits J&J to provide certain transitional services to the Commission-approved buyer of the EVH product line assets. These transitional services may be necessary for a smooth transition of the product line to the acquirer and to ensure continued and uninterrupted service to customers during the transition.

### Proximal Anastomotic Assist Devices

Surgeons use proximal AADs in CABG procedures to avoid the need to clamp the aorta when attaching a harvested vessel to it. If a proximal AAD is not used, the surgeon must use a clamp to stop the flow of blood to a segment of the aorta while the harvested vessel is surgically attached. Using a clamp can cause calcified plaque particles to dislodge from the aorta and travel through the blood stream to the brain, risking neurological dysfunction or stroke.

The proper geographic market in which to analyze the effects of the proposed transaction on the market for proximal AADs is the United States. Proximal AADs are medical devices that must be approved by the FDA before being marketed in the United States. As with other medical devices, the clinical testing and regulatory approval process for proximal AADs can be costly and time-consuming, preventing proximal AADs approved outside of the United States but not approved within the United States from serving as a competitive alternative for U.S. consumers.

There are currently three firms in the U.S. market for proximal AADs, making it a highly concentrated market. The evidence indicates that J&J and Guidant's manual proximal AADs are each others' closest competitors. Medtronic also participates in the market with an automatic device that it recently launched in the United States. A fourth firm, St. Jude Medical, removed its automatic device, Symmetry<sup>®</sup>, from the market last year amidst reports of device failures. J&J's proximal AAD, eNclose<sup>®</sup>, was developed and is manufactured by Novare; J&J and Novare have a distribution agreement making J&J the sole distributor of eNclose<sup>®</sup> in the United States.

As with the other medical devices discussed, entry into the market for proximal AADs is difficult, costly, and time-consuming. Additionally, the alleged safety concerns regarding St. Jude's Symmetry device have resulted in greater scrutiny of proximal AADs by the FDA. The increased scrutiny is likely to substantially increase the cost of developing a proximal AAD. In addition, it appears that the publicity surrounding Symmetry's removal from the market has dampened physician enthusiasm for these devices. These developments, along with the declining number of overall U.S. CABG procedures, decrease the likelihood of entry into this market.

The proposed acquisition is likely to cause significant competitive harm in the market for proximal AADs by eliminating competition between J&J and Guidant and reducing the number of competitors in the market from three to two. The evidence has also shown that J&J and Guidant's products are likely each others' closest competitors in the proximal AAD market because they are more similar to each other than to Medtronic's product. The proposed acquisition is therefore likely to enable the combined J&J/Guidant to raise prices for proximal AADs unilaterally.

The proposed acquisition's anticompetitive effects in the market for proximal AADs are remedied by the proposed Consent Agreement's requirement that J&J terminate its distribution agreement with Novare for Novare's proximal AAD, eNclose. It is anticipated that it will take Novare no more than two months to find a new distribution partner for eNclose.

#### *Appointment of an Interim Monitor and a Divestiture Trustee*

The proposed Consent Agreement contains a provision that allows the Commission to appoint an interim monitor to oversee J&J's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order. The interim monitor is required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures, about the efforts being made to accomplish the divestitures, and the provision of services and assistance during the transition period for the EVH divestiture.

Finally, the proposed Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee if any or all of the above remedies are not accomplished within the time frames required by the Consent Agreement. The divestiture trustee may be appointed to accomplish any and all of the remedies required by the proposed Consent Agreement that have not yet been fulfilled upon expiration of the time period allotted for each.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission, with Chairman Majoras and Commissioner Harbour recused.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 05-22165 Filed 11-7-05; 8:45 am]

**BILLING CODE 6750-01-P**

### GOVERNMENT ACCOUNTABILITY OFFICE

#### **Advisory Council on Government Auditing Standards; Notice of Meeting**

The Advisory Council on Government Auditing Standards will meet Monday, December 5, 2005, from 8:30 a.m. to 5 p.m., in room 7C13 of the Government Accountability Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation on Monday afternoon.

Any interested person who plans to attend the meeting as an observer must contact Sharon Chase, Council Assistant, 202-512-9406. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO Building. For further information, please contact Ms. Chase. Please check the Government Auditing Standards Web page (<http://www.gao.gov/govaud/ybk01.htm>) one week prior to the meeting for a final agenda.

**Jeanette M. Franzel,**

*Director, Financial Management and Assurance.*

[FR Doc. 05-22205 Filed 11-7-05; 8:45 am]

**BILLING CODE 1610-02-P**

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### **Centers for Medicare & Medicaid Services**

#### **Privacy Act of 1974; Report of a New System of Records**

**AGENCY:** Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Notice of a New System of Records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new

SOR titled, "Medicare Prescription Drug Plan Finder (MPDPF) System, HHS/CMS/CBC, System No. 09-70-0564." Under the provisions of Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173), CMS has provided the participants of eligibility transactions a query and response solution in a single data center using a three-tier architecture. Enterprise Business Services (EBS), the user interface, will have the responsibility of receiving identifying information on Medicare beneficiaries for processing eligibility requests and enrollment assistance with the Medicare Prescription Drug Benefit Program. These inbound messages will be sent to EBS for processing of the eligibility request and for securing the information from the CMS Community Based Organization/Customer Service Representative (CBO/CSR) Data Store, and for sending an available plan option response back via the internet. EBS will capture the identifying information and enrollment selection, and transmit it to the selected Medicare Prescription Drug Plan (PDP) or Medicare Advantage Prescription Drug Plan (MAPD). This initiative will streamline and facilitate drug benefit eligibility determination and the enrollment process.

The primary purpose of this system is to provide a Web accessible inquiry system that will provide a mechanism to support an individual beneficiary's efforts in performing drug benefit eligibility queries and to enroll them into selected plans. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant; (2) assist PDPs and MAPDs directly or through the Enterprise Business Services; (3) support constituent requests made to a Congressional representative; and (4) support litigation involving the Agency related to this system. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See EFFECTIVE DATES section for comment period.

**EFFECTIVE DATES:** CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB) on November 1, 2005. To ensure that all parties have adequate time in which to comment, the new SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development, CMS, Mail Stop N2-04-27, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern daylight time.

**FOR FURTHER INFORMATION CONTACT:** Thomas Dudley, Division of Website Project Management, Beneficiary Information Services Group, Center for Beneficiary Choices, CMS, Mail Stop S1-01-26, 7500 Security Boulevard, Baltimore, Maryland, 21244-1850. His telephone number is 410-786-1442, or e-mail at [Thomas.Dudley@cms.hhs.gov](mailto:Thomas.Dudley@cms.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The public version of the toll will use knowledge based authentication (KBA), to provide the end user access to personalized information about their drug benefit eligibility and enrollment. KBA allows a user to access the system based on what they know without the need for a user id/password. To successfully authenticate, the user will need to provide the following information: Health Insurance Claim Number (HICN), Date of Birth, Last Name, Type of Enrollment, Effective date of enrollment, and Zip Code. This information will then be validated in the CMS Data Center. All data elements must match to successfully authenticate the user. If the authentication fails, the user will be taken directly to the default route and asked to respond to a series of questions in lieu of authentication. They will not be provided with "retry" options. If successfully authenticated, Part D and Part C information will be retrieved from the data center and passed to MPDPF.

CMS has planned to provide the participants of eligibility transactions a query and response solution in a single data center using a three-tier architecture. EBS, the user interface, will have the responsibility of receiving identifying information on Medicare beneficiaries for processing eligibility requests and enrollment assistance with the Medicare Prescription Drug Benefit Program. These inbound messages will

be sent to EBS for processing of the eligibility request and for securing the information from the CMS CBO/CSR Data Store, and for sending a response back via the internet.

The drug benefit itself is very complex. The user must self-identify him/herself into one of 4 categories in order to get the options applicable in his/her circumstances (full dual subsidy eligible; full subsidy eligible; partial subsidy eligible; no subsidy eligible). CMS knows from prior education and consumer research efforts that it is extremely difficult for persons with Medicare to understand the nuances of these options and to accurately categorize them. This presents a challenge for both the direct beneficiary user and those assisting the beneficiary (CSRs and CBOs). However, CMS data systems contain information that can easily provide the user's categorization and then enable the drug benefit tool to accurately present only those options that are applicable to his/her unique circumstances. This is the primary driver for the development of the eligibility query.

A secondary, but also essential, driver is to provide an efficient means for users to explore their drug benefit choices. We need to ensure that we provide tools that can encourage the maximum number of Medicare beneficiaries to use self-service options given the volume of inquiries we are projecting and the extraordinary costs for servicing those calls. To meet the varying needs of different end-users, two different versions of the MPDPF will be developed: one tool will be used for the Public (including CBOs, and beneficiaries) and the other tool will be dedicated to CSR staffing the call centers that service 1-800-Medicare.

## I. Description of the Proposed System of Records

### A. Statutory and Regulatory Basis for the System

Authority for this system is given under the provisions of Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108-173). This new prescription drug benefit program was enacted into law on December 8, 2003, amended Title XVIII of the Social Security Act (the Act), and codified at Title 42 Code of Federal Regulations (CFR) Parts 403, 411, 417 and 423 by establishing a new Medicare "Part D" Prescription Drug Benefit program. Part D of Title XVIII of the Act, as amended by the MMA, and its implementing regulations at 42 CFR Parts 403, 411, 417 and 423.

### B. Collection and Maintenance of Data in the System

Information collected for this system will include but is not limited to, individuals who voluntarily access and who successfully validate information required by the Web-based Application Systems maintained by CMS.

Information collected for this system will include, but is not limited to, last name, gender, HICN, telephone number, geographic location, type of enrollment (Medicare Part A or Part B), and effective date of enrollment in Part A and Part B.

## II. Agency Policies, Procedures, and Restrictions on the Routine Use

### A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release MPDPF information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of MPDPF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to provide a Web accessible inquiry system that will provide a mechanism to support an individual beneficiary's efforts in performing drug benefit eligibility queries and to enroll them into selected plans.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

## III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system.

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than to return or destroy all information at the completion of the contract.

2. To Medicare Prescription Drug Plans (PDP) and Medicare Advantage Prescription Drug Plans (MAPD) directly or through the Enterprise Business Services, a CMS intermediary for the administration of Title XVIII of the Act.

PDPs and MAPDs require MPDPF information in order to establish the validity of evidence or to verify the accuracy of information presented by

the individual, as it concerns the individual's entitlement to Part D benefits under the Medicare Prescription Drug Benefit Program.

3. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

4. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation. Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures. This system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, Subparts A and E, 65 FR 82462 (12-28-00)). Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small

that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

#### IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A-130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

#### V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the

system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: October 27, 2005.

**Charlene Frizzera,**

*Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.*

**09-70-0564**

#### SYSTEM NAME:

"Medicare Prescription Drug Plan Finder (MPDPF) System, HHS/CMS/CBC"

#### SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive

#### SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244-1850, and at various contractor locations.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information collected for this system will include but is not limited to, individuals who voluntarily access and who successfully validate information required by the Web-based Application Systems maintained by CMS.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected for this system will include, but is not limited to, last name, gender, Health Insurance Claim Number (HICN), telephone number, geographic location, type of enrollment (Medicare Part A or Part B), and effective date of enrollment in Part A and Part B.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is given under the provisions of Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108-173). This new prescription drug benefit program was enacted into law on December 8, 2003, amended Title XVIII of the Social Security Act (the Act), and codified at Title 42 Code of Federal Regulations (CFR) parts 403, 411, 417 and 423 by establishing a new Medicare "Part D" Prescription Drug Benefit program. Part D of Title XVIII of the Act, as amended by the MMA, and its implementing regulations at 42 CFR Parts 403, 411, 417 and 423.

#### PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to provide a Web accessible inquiry system that will provide a mechanism to support an individual beneficiary's efforts in performing drug benefit eligibility queries and to enroll them into selected plans. Information in this system will also be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant; (2) assist PDPs and MAPDs directly or through the Enterprise Business Services; (3) support constituent requests made to a Congressional representative; and (4) support litigation involving the Agency related to this system.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.
2. To Medicare Prescription Drug Plans (PDP) and Medicare Advantage Prescription Drug Plans (MAPD) directly or through the Enterprise Business Services, a CMS intermediary for the administration of Title XVIII of the Act.
3. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.
4. To the Department of Justice (DOJ), court or adjudicatory body when
  - a. The Agency or any component thereof; or
  - b. any employee of the Agency in his or her official capacity; or
  - c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or
  - d. The United States Government; Is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the

records are both relevant and necessary to the litigation.

B. Additional Provisions Affecting Routine Use Disclosures. This system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, Subparts A and E, 65 Fed. Reg. 82462 (12-28-00)). Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Computer diskette and on magnetic storage media.

**RETRIEVABILITY:**

Information can be retrieved by the individual identifiable information of the beneficiary.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and

Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A-130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained in a secure storage area with identifiers. Disposal occurs 6 years and 3 months from the time the individual accesses the MPDPF.

**SYSTEM MANAGER AND ADDRESS:**

Director, Beneficiary Information Services Group, Center for Beneficiary Choices, CMS, Mail Stop S1-01-26, 7500 Security Boulevard, Baltimore, Maryland, 21244-1850.

**NOTIFICATION PROCEDURE:**

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, and for verification purposes, the subject individual's name (woman's maiden name, if applicable).

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2).)

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

**RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system include data collected from the initial voluntary inquiry made by or on behalf of the individual and validated through the Medicare Beneficiary Database.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 05-22192 Filed 11-7-05; 8:45 am]

BILLING CODE 4120-03-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2004N-0226]

**Food and Drug Administration  
Modernization Act of 1997:  
Modifications to the List of Recognized  
Standards, Recognition List Number:  
013**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication entitled "Modifications to the List of Recognized Standards, Recognition List Number: 013" (Recognition List Number: 013), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

**DATES:** Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of "Modifications to the List of Recognized Standards, Recognition List Number: 013" to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or FAX your request to 301-443-8818. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: [standards@cdrh.fda.gov](mailto:standards@cdrh.fda.gov). This document may also be accessed on FDA's Internet site at <http://www.fda.gov/cdrh/fedregin.html>. See section VI of this document for electronic access to the searchable

database for the current list of FDA recognized consensus standards, including Recognition List Number: 013 modifications and other standards related information.

**FOR FURTHER INFORMATION CONTACT:**

Carol L. Herman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 12720 Twinbrook Pkwy., MD 20857, 301-827-0021.

**I. Background**

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105-115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would

implement its standard recognition program and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617), July 12, 1999 (64 FR 37546), November 15, 2000 (65 FR 69022), May 7, 2001 (66 FR 23032), January 14, 2002 (67 FR 1774), October 2, 2002 (67 FR 61893), April 28, 2003 (68 FR 22391), March 8, 2004 (69 FR 10712), June 18, 2004 (69 FR 34176), and October 4, 2004 (69 FR 59240), FDA modified its initial list of FDA recognized consensus standards. These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains "hypertext markup language" (HTML) and "portable document format" (PDF) versions of the list of "FDA Recognized Consensus Standards." Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

**II. Modifications to the List of Recognized Standards, Recognition List Number: 013**

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency's searchable database. FDA will use the term "Recognition List Number: 013" to identify these current modifications.

In table 1 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1.

Old Item No.	Standard	Change	Replacement Item No.
<b>A. Anesthesia</b>			
52	ASTM F1463-93 (1999), Standard Specification for Alarm Signals in Medical Equipment Used in Anesthesia and Respiratory Care	Withdrawn	
<b>B. Biocompatibility</b>			
1	ASTM E1262-88 (2003), Standard Guide for Performance of the Chinese Hamster Ovary Cell/Hypoxanthine Guanine Phosphoribosyl Transferase Gene Mutation Assay	Withdrawn and replaced with newer version	83
2	ASTM E1263-97 (2003), Standard Guide for Conduct of Micro-nucleus Assays in Mammalian Bone Marrow Erythrocytes	Withdrawn and replaced with newer version	84
3	ASTM E1280-97 (2003), Standard Guide for Performing the Mouse Lymphoma Assay for Mammalian Cell Mutagenicity	Withdrawn and replaced with newer version	85
19	AAMI/ANSI/ISO10993-10: 2002(E), Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Sensitization	Withdrawn and replaced with newer version	86
20	AAMI/ANSI/ISO10993-10: 2002(E), Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Sensitization—Maximization Sensitization Test	Withdrawn and replaced with newer version	87
21	AAMI/ANSI/ISO10993-11:1993, Biological Evaluation of Medical Devices—Part 11: Tests for Systemic Toxicity	Extent of Recognition and Relevant Guidance	
28	AAMI/ANSI/ISO10993-12:2002(E), Biological Evaluation of Medical Devices—Part 12: Sample Preparation and Reference Materials	Withdrawn and replaced with newer version	88
34	ASTM F749-98 (2002)e2, Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit	Withdrawn and replaced with newer version	89

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
37	ASTM E1397–91 (2003), Standard Practice for the In Vitro Rat Hepatocyte DNA Repair Assay	Withdrawn and replaced with newer version	90
38	ASTM E1398–91 (2003), Standard Practice for the In Vivo Rat Hepatocyte DNA Repair Assay	Withdrawn and replaced with newer version	91
39	ASTM F748–04, Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices	Withdrawn and replaced with newer version	92
40	ASTM F763–04, Standard Practice for Short-Term Screening of Implant Materials	Withdrawn and replaced with newer version	93
41	ASTM F981–04, Standard Practice for Assessment of Compatibility of Biomaterials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone	Withdrawn and replaced with newer version	94
42	ASTM F1984–99 (2003), Standard Practice for Testing for Whole Complement Activation in Serum by Solid Materials	Withdrawn and replaced with newer version	95
43	ASTM F1903–98 (2003), Standard Practice for Testing for Biological Responses to Particles In Vitro	Withdrawn and replaced with newer version	96
45	ASTM F1983–99 (2003), Standard Practice for Assessment of Compatibility of Absorbable/Resorbable Biomaterials for Implant Applications	Withdrawn and replaced with newer version	97
51	AAMI/ANSI/ISO10993–1: 2003(E), Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing	Withdrawn and replaced with newer version	98
52	ASTM F1904–98e1 (2003), Standard Practice for Testing for Biological Responses to Particles In Vivo	Withdrawn and replaced with newer version	99
53	ASTM E1372–95 (2003), Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	Withdrawn and replaced with newer version	100
70	ASTM F750–87 (2002)e1, Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse	Relevant guidance	
74	USP 28–NF21 Biological Tests <87>, Biological Reactivity Test, In Vitro—Direct Contact Test	Withdrawn and replaced with newer version	101
75	USP 28–NF21 Biological Tests <87>, Biological Reactivity Test, In Vitro—Elution Test	Withdrawn and replaced with newer version	102
76	USP 28–NF21 Biological Tests <88>, Biological Reactivity Test, In Vivo Procedure—Preparation of Sample	Withdrawn and replaced with newer version	103
77	USP 28–NF21 Biological Tests <88>, Biological Reactivity Test, In Vitro, Classification of Plastics—Intracutaneous Test	Withdrawn and replaced with newer version	104
78	USP 28–NF21 Biological Tests <88>, Biological Reactivity Test, In Vitro, Classification of Plastics—Systemic Injection Test	Withdrawn and replaced with newer version	105
79	ASTM F619–03, Standard Practice for Extraction of Medical Plastics	Withdrawn and replaced with newer version	106
80	ASTM F1877 (2003)e1, Standard Practice for Characterization of Particles	Withdrawn and replaced with newer version	107
81	ASTM F1905 (2003)e1, Standard Practice for Selecting Tests for Determining the Propensity of Materials to Cause Immunotoxicity	Withdrawn and replaced with newer version	108
<b>B. Cardiovascular/Neurology</b>			
4	ANSI/AAMI SP10:2002—Manual, Electronic, or Automated Sphygmomanometers	Withdrawn and replaced with newer version	53
5	ANSI/AAMI/ISO 7198:1998/2001(R) 2004, Cardiovascular Implants—Tubular vascular prostheses	Withdrawn and replaced with newer version	54

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
14	ASTM F1830:05, Recommended Practice for Selection of Blood for In Vitro Hemolytic Evaluation of Blood Pumps	Withdrawn and replaced with newer version	55
15	ASTM F1841:05, Recommended Practice for Assessment of Hemolysis in Continuous Flow Blood Pumps	Withdrawn and replaced with newer version	56
48	ASTM F2129:04, Test Method for Conducting Cyclic Potentiodynamic Polarization Measurements to Determine the Corrosion Susceptibility of Small Implant Devices	Withdrawn and replaced with newer version	57
C. Dental/Ear, Nose, and Throat			
29	IEC 60601–2–18:2000 Amendment 1, Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Endoscopic Equipment	Withdrawn and replaced with newer version	122
40	ANSI/ASA S3.6–2004, Specification for Audiometers	Withdrawn and replaced with newer version	123
41	ANSI/ASA S3.22:2003, Specification of Hearing Aid Characteristics	Withdrawn and replaced with newer version	124
61	ISO 1562:2004, Dentistry—Casting gold alloys	Withdrawn and replaced with newer version	125
82	ISO 10477:2004, Dentistry—Polymer-based crown and bridge materials	Withdrawn and replaced with newer version	126
D. General			
16	ASTM D903:1993, Test Methods for Peel or Stripping Strength of Adhesive Bonds	Contact person	
28	IEC 60601–1–2, (Second Edition), Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests	Extent of recognition	
30	AAMI/IEC 60601–1–2, Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral standard: Electromagnetic Compatibility—Requirements and Tests (Edition 2:2001)	Title and extent of recognition	
2	IEC 60601–1, Medical Electrical Equipment—Part 1: General Requirements for Safety	Withdrawn	
4	IEC 60601–1, Medical Electrical Equipment—Part 1: General Requirements for Safety, 1988; Amendment 1, 1991–11, Amendment 2, 1995–03	Contact person, devices affected and extent of recognition	
E. General Hospital/General Plastic Surgery			
18	ISO 8537:1991 Sterile Single-Use Syringes, With or Without Needle, for Insulin	Contact person	
38	ASTM F1671–03: Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Blood-Borne Pathogens Using Phi-X174 Bacteriophage Penetration as a Test System.	Withdrawn and replaced with newer version	130
48	ASTM D6499–03 Standard Test Method for the Immunological Measurement of Antigenic Protein in Natural Rubber and its Products	Withdrawn and replaced with newer version	131
31 Ophthalmic 89 Radiology	ISO 11810–1:2005: Lasers and Laser-Related Equipment—Test Method and Classification for the Laser-Resistance of Surgical Drapes and/or Patient-Protective Covers—Part 1: Primary Ignition and Penetration	Transferred from Ophthalmic and Radiology	132
97	USP 28: 2005 Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version	133

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
98	USP 28<11>: 2005 Sterile Sodium Chloride for Irrigation	Withdrawn and replaced with newer version	134
99	USP 28: 2005 Absorbable Surgical Suture	Withdrawn and replaced with newer version	135
100	USP 28<881>: 2005 Tensile Strength	Withdrawn and replaced with newer version	136
101	USP 28<861>: 2005 Sutures—Diameter	Withdrawn and replaced with newer version	137
102	USP 28<871>: 2005 Sutures Needle Attachment	Withdrawn and replaced with newer version	138
103	USP 28<11>: 2005 Sterile Water for Irrigation	Withdrawn and replaced with newer version	139
104	USP 28<11>: 2005 Heparin Lock Flush Solution	Withdrawn and replaced with newer version	140
105	USP 28<11>: 2005 Sodium Chloride Injection	Withdrawn and replaced with newer version	141
11	ISO 594–1:1986 Conical Fittings With a 6% (Luer) Taper for Syringes, Needles, and Certain Other Medical Equipment—Part 1: General Requirements	Title and contact person	
13	ISO 595–1:1986 Reusable All-Glass or Metal-and-Glass Syringes for Medical Use—Part 1: Dimensions	Title and contact person	
14	ISO 595–2:1987 Reusable All-Glass or Metal-and-Glass Syringes for Medical Use—Part 2: Design, Performance Requirements and Tests	Title and contact person	
15	ISO 7864:1993 Sterile Hypodermic Needles for Single Use	Contact person	
16	ISO 7886–1:1993 Sterile Hypodermic Syringes for Single Use—Part 1: Syringes for Manual Use	Title and contact person	
62	ISO 8536–6:1995 Infusion Equipment for Medical Use—Part 6: Freeze Drying Closures for Infusion Bottles	Title and contact person	
63	ISO 8536–7–1999: Infusion Equipment for Medical Use—Part 7: Caps Made of Aluminum-Plastics Combinations for Infusion Bottles	Contact Person	
64	ISO 8536–3–1999: Infusion Equipment for Medical Use—Part 3: Aluminum Caps for Infusion Bottles	Title and contact person	
66	ISO 8536–1–2000: Infusion equipment for medical use—Part 1: Infusion glass bottles	Title and Contact Person	
68	ISO 7886–2–1996: Sterile Hypodermic Syringes for Single Use—Part 2: Syringes for Use With Power-Driven Syringe Pumps	Title and contact person	;
69	ISO 9626–1991: Stainless Steel Needle Tubing for the Manufacture of Medical Devices	Title and contact person	
70	ASTM E825–98 (2003) Standard Specification for Phase Change-Type Disposable Fever Thermometer for Intermittent Determination of Human Temperature	Contact person	
111	IEC 60601–2–38 Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Electrically Operated Hospital Beds	Contact person	
119	AAMI BF7: (R2002) Blood Transfusion Micro-Filters	Contact person	
120	ASTM F1054–01: Standard Specification for Conical Fittings	Contact person	

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
121	ISO 8536-2-2001: Infusion Equipment for Medical Use—Part 2: Closures for Infusion Bottles	Contact person	
122	ISO 8536-5-2004: Infusion Equipment for Medical Use—Part 5: Burette Infusion Sets for Single Use, Gravity Feed	Title and contact person	
126	ISO 8536-4-2004: Infusion Equipment for Medical Use—Part 4: Infusion Sets for Single Use, Gravity Feed	Contact person	
127	ISO 1135-4-2004: Transfusion Equipment for Medical Use—Part 4: Transfusion Sets for Single Use	Contact person	
129	ISO 594-2:1998 Conical Fittings With a 6% (Luer) Taper for Syringes, Needles, and Certain Other Medical Equipment—Part 2: Lock Fittings	Contact person	
F. In Vitro Diagnostic			
65	CLSI EP5-A2, Evaluation of Precision Performance of Quantitative Measurement Methods; Approved Guideline—Second Edition	Withdrawn and replaced with new version	110
54	CLSI D12-A2, Immunoprecipitin Analyses: Procedures for Evaluating the Performance of Materials—Second Edition; Approved Guideline	Product codes	
G. Materials			
9	ASTM F563-00: Standard Specification for Wrought Cobalt-20 Nickel-20 Chromium-3.5 Molybdenum-3.5 Tungsten-5 Iron Alloy for Surgical Implant Applications (UNS R30563)	Withdrawn	
13	ASTM F648-04: Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	Withdrawn and replaced with newer version	106
16	ASTM F746-04: Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	Withdrawn and replaced with newer version	107
25	ASTM F1295-05: Standard Specification for Wrought Titanium-6 Aluminum-7 Niobium Alloy for Surgical Implant Applications (UNS R56700)	Withdrawn and replaced with newer version	108
34	ASTM F1659-95: Standard Test Method for Bending and Shear Fatigue Testing of Calcium Phosphate Coatings on Solid Metallic Substrates	Withdrawn	
72	ASTM F2213-04: Standard Test Method for Measurement of Magnetically Induced Torque on Passive Implants in the Magnetic Resonance Environment	Title	
73	ASTM F561-05, Practice for Retrieval and Analysis of Implanted Medical Devices, and Associated Tissues	Withdrawn and replaced with newer version	109
74	ASTM F1377-04: Standard Specification for Cobalt-28 Chromium-6 Molybdenum Powder for Coating of Orthopedic Implants (UNS R30075)	Withdrawn and replaced with newer version	110
75	ASTM F1160-05: Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings	Withdrawn and replaced with newer version	111
80	ASTM F1088-04a: Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation	Title	
83	ASTM F1044-05: Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings	Withdrawn and replaced with newer version	112
84	ASTM F1147-05: Standard Test Method for Tension Testing of Calcium Phosphate and Metal Coatings	Withdrawn and replaced with newer version	113

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
90	ASTM F2255–05: Standard Test Method for Strength Properties of Tissue Adhesives in Lap Shear by Tension Loading	Withdrawn and replaced with newer version	114
91	ASTM F2256–05: Standard Test Method for Strength Properties of Tissue Adhesives in T-Peel by Tension Loading	Withdrawn and replaced with newer version	115
92	ASTM F2258–05: Standard Test Method for Strength Properties of Tissue Adhesives in Tension	Withdrawn and replaced with newer version	116
93	ASTM F86–04: Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants	Withdrawn and replaced with newer version	117
H. OB-GYN/Gastroenterology			
1	AAMI RD5:1992: Hemodialysis systems	Withdrawn	
17	ASTM D3492–03: Standard Specification for Rubber Contraceptives (Male Condoms)	Withdrawn and replaced with newer version	32
24	ASTM F623–99e1: Standard Performance Specification for Foley Catheter	Withdrawn and replaced with newer version	33
26	ISO 4074:2002/Cor.1:2003(E): Natural Latex Rubber Condoms—Requirements and Test Methods, Technical Corrigendum 1	Withdrawn and replaced with newer version	34
27	ASTM D6324–99a (Reapproved 2004): Standard Test Methods for Male Condoms Made From Synthetic Materials	Withdrawn and replaced with newer version	35
I. Ophthalmic			
31	ISO 11810:2002, Optics and Optical Instruments—Lasers and Laser-Related Equipment—Test Method for the Laser-Resistance of Surgical Drapes and/or Patient-Protective Covers	Withdrawn newer version recognized under General Hospital/ General Plastic Surgery	
J. Orthopedic			
126	ASTM F366–04: Standard Specification for Fixation Pins and Wires	Withdrawn and replaced with newer version	180
159	ASTM F1717–04: Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model	Withdrawn and replaced with newer version	181
173	ASTM F1800–04: Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements	Withdrawn and replaced with newer version	182
K. Radiology			
1	ANSI PH 2.43–1982: Method for Sensitometry/Medical X-Ray Screen-Film	Contact person	
2	ANSI IT 1.48–1997 Photography (Films)—Medical Hard Copy Imaging Film-Dimensions and Specifications	Title and contact person	
5	ANSI PH 2.50–1983: Method/Sensitometry Direct Exposure Medical/Dental	Contact person	
6	IEC 60806 (R1984) Determination of the Maximum Symmetrical Radiation Field From a Rotating Anode X-ray Tube for Medical Diagnosis	Title and contact person	
8	IEC 60336 (R1993) Medical Electrical Equipment—X-ray Tube Assemblies for Medical Diagnosis—Characteristics of Focal Spots	Title	
23	NEMA XR 10–1986 (R2003) Measurement of the Maximum Symmetrical Radiation Field from a Rotating Anode X-Ray Tube Used for Medical Diagnosis	Reaffirmation	

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
34	IEC 60601–2–7–1998 Medical Electrical Equipment—Part 2–7: Particular Requirements for the Safety of High-Voltage Generators of Diagnostic X-ray Generators	Title and contact person	
37	IEC 60601–2–11–2004 Amendment 1—Medical electrical equipment—Part 2–11: Particular requirements for the Safety of Gamma Beam Therapy Equipment Withdrawn and Replaced With Newer Version	133	
52	UL 544 (1998): Standard for Medical and Dental Equipment—Ed. 4.0	Contact person	
56	IEC 61674–1997 Medical Electrical Equipment—Dosimeters With Ionization Chambers and/or Semi-Conductor Detectors as Used in X-ray Diagnostic Imaging	Withdrawn	
57	IEC 60731–1997 Medical Electrical Equipment—Dosimeters With Ionization Chambers as Used in Radiotherapy	Title and devices affected	
61	UL 122 (1999): Standard for Photographic Equipment—Ed. 4.0	Contact person	
62	UL 187 (1998): Standard for X-Ray Equipment—Ed. 7.0	Contact person	
79	NEMA XR 7–1995 (R2000) High-Voltage X-Ray Cable Assemblies and Receptacles	Title and contact person	
80	NEMA XR 9–1984 (R1994, R2000) Power Supply Guidelines for X-Ray Machines	Contact person	
81	NEMA XR 13–1990 (R1995, R2000) Mechanical Safety Standard for Power Driven Motions of Electromedical Equipment	Contact person	
82	NEMA XR 14–1990 (R1995, R2000) Recommended Practices for Load Bearing Mechanical Assemblies Used in Diagnostic Imaging	Contact Person	
89	ISO 11810:2002 Optics and Optical Instruments—Lasers and Laser-Related Equipment—Test Method for the Laser-Resistance of Surgical Drapes and/or Patient-Protective Covers	Withdrawn Newer version recognized under General Hospital/General Plastic Surgery	
107	ISO 11146–1:2005 Lasers and Laser-Related Equipment—Test Methods for Laser Beam Widths, Divergence Angles and Beam Propagation Ratios—Part 1: Stigmatic and Simple Astigmatic Beams	Withdrawn and replaced with newer version	134
119	NEMA PS 3.1–3.18 Digital Imaging and Communications in Medicine (DICOM) Set	Title	
126	IEC 60601–2–28–1993 Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of X-ray Source Assemblies and X-ray Tube Assemblies for Medical Diagnosis—Ed. 1.0	Title and contact person	
127	IEC 60601–2–32–1994 Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Associated Equipment of X-ray Equipment—Ed. 1.0	Title and contact person	
129	NEMA NU 1–2001 (Errata 2004): Performance Measurements of Scintillation Cameras	Title	
131	IEC 61217–2002 Radiotherapy Equipment—Coordinates Movements and Scales Consolidated Ed. 1.1	Title	
132	IEC 60731–2002 Amendment 1—Medical Electrical Equipment—Dosimeters With Ionization Chambers as Used in Radiotherapy	Title and devices affected	
L. Sterility			
48	ANSI/AAMI ST40:2004, Table-Top Dry Heat (Heated Air) Sterilization and Sterility Assurance in Dental and Medical Facilities, 2ed	Withdrawn and replaced with newer version	152

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
52	ANSI/AAMI ST59:1999, Sterilization of Health Care Products—Biological Indicators Part 1: General	Title, relevant guidance, and contact person	
70	ANSI/AAMI/ISO 14161:2000, Sterilization of Health Care Products—Biological Indicators—Guidance for the Selection, Use, and Interpretation of Results, 2ed.	Contact Person	
71	ANSI/AAMI ST8:2001, Hospital Steam Sterilizers	Contact Person	
77	ANSI/AAMI ST24:1999, Automatic, General Purpose Ethylene Oxide Sterilizers and Ethylene Oxide Sterilant Sources Intended for Use in Health Care Facilities, 3ed.	Title and contact person	
116	ANSI/AAMI ST72:2002, Bacterial Endotoxins—Test Methodologies, Routine Monitoring, and Alternatives to Batch Testing	Relevant guidance	
117	ANSI/AAMI ST35:2003, Safe Handling and Biological Decontamination of Medical Devices in Health Care Facilities and in Nonclinical Settings	Relevant guidance and contact person	
119	ANSI/AAMI ST55:2003, Table-Top Steam Sterilizers, 2ed.	Correct title and contact person	
124	USP 28:2005, Biological Indicator for Dry Heat Sterilization, Paper Carrier	Withdrawn and replaced with newer version	153
125	USP 28:2005, Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier	Withdrawn and replaced with newer version	154
126	USP 28:2005, Biological Indicator for Steam Sterilization, Paper Carrier	Withdrawn and replaced with newer version	155
127	USP28:2005, <61> Microbial Limits Test	Withdrawn and replaced with newer version	156
128	USP 28:2005, <71>, Microbiological Tests, Sterility Tests	Withdrawn and replaced with newer version	157
129	USP28:2005, <85>, Biological Tests and Assays, Bacterial Endotoxin Test (LAL)	Withdrawn and replaced with newer version	158
130	USP28:2005 <151>, Pyrogen Test (USP Rabbit Test)	Withdrawn and replaced with newer version	159
131	USP28:2005 <1211>, Sterilization and Sterility Assurance of Compendial Articles	Withdrawn and replaced with newer version	160
132	USP28:2005 <161>, Transfusion and Infusion Assemblies and Similar Medical Devices	Withdrawn and replaced with newer version	161
133	USP 28:2005, Biological Indicator for Steam Sterilization—Self-Contained	Withdrawn and replaced with newer version	162

**III. Listing of New Entries**

The listing of new entries and consensus standards added as

modifications to the list of recognized standards under Recognition List Number: 013, follows:

Item No.	Title of Standard	Reference No. and Date
A. Anesthesia		
65	Medical Electrical Equipment—Particular Requirements for the Basic Safety and Essential Performance of Respiratory Gas Monitors	ISO 21647:2005
66	Medical Electrical Equipment—Particular Requirements for the Basic Safety and Essential Performance of Pulse Oximeter Equipment for Medical Use	ISO 9919:2005

Item No.	Title of Standard	Reference No. and Date
B. Dental/Ear, Nose, Throat		
127	Root Canal Files, Type H (Hedstrom)	ANSI/ADA Specification No. 58:2004
128	Dentistry—Elastomeric Impression Materials	ISO/4823:2000 Technical Corrigendum 1:2004
129	Dentistry—Elastomeric Impression Materials	ANSI/ADA Specification No. 19:2000 Technical Corrigendum 1:2004
C. General		
34	Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and tests (Edition 2:2001 with Amendment 1:2004; Edition 2.1 (Edition 2:2001 Consolidated With Amendment 1:2004))	IEC 60601–1–2:2004
35	Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral standard: Electromagnetic Compatibility—Requirements and Tests (Edition 2:2001 with Amendment 1:2004)	AAMI/IEC 60601–1–2:2001
D. General Hospital/General Plastic Surgery		
142	Medical Electrical Equipment—Part 2: Particular Requirements for Safety of Baby Incubators	ANSI/AAMI I136:2004
143	Medical Electrical Equipment—Part 2: Particular Requirements for Safety of Transport Incubators	ANSI/AAMI I151:2004
E. In Vitro Diagnostic		
109	Laboratory Automation: Data Content for Specimen Identification; Approved Standard	CLSI AUTO7–A:2004
111	Collection, Transport, and Processing of Blood Specimens for Testing Plasma-Based Coagulation Assays; Approved Guideline—Fourth Edition	CLSI H21–A4:2003
112	Point-of-Care Monitoring of Anticoagulation Therapy; Approved Guideline	CLSI H49–A:2004
113	Assessing the Quality of Immunoassay Systems: Radioimmunoassays, and Enzyme, Fluorescence, and Luminescence Immunoassays; Approved Guideline	CLSI I/LA23–A:2004
114	Standard Specification for Low-Level Protocol to Transfer Messages Between Clinical Laboratory Instruments and Computer Systems	CLSI LIS01–A:2003
115	Standard Specification for Transferring Information Between Clinical Instruments and Computer Systems; Approved Standard—Second Edition	CLSI LIS02–A2:2004
116	Standard Guide for Selection of a Clinical Laboratory Information Management System	CLSI LIS03–A:2003
117	Standard Guide for Documentation of Clinical Laboratory Computer Systems	CLSI LIS04–A:2003
118	Standard Specification for Transferring Clinical Observations Between Independent Computer Systems	CLSI LIS05–A:2003
119	Standard Practice for Reporting Reliability of Clinical Laboratory Information Systems	CLSI LIS06–A:2003
120	Standard Specification for Use of Bar Codes on Specimen Tubes in the Clinical Laboratory	CLSI LIS07–A:2003
121	Standard Guide for Functional Requirements of Clinical Laboratory Information Management Systems	CLSI LIS08–A:2003
122	Standard Guide for Coordination of Clinical Laboratory Services Within the Electronic Health Record Environment and Networked Architectures	CLSI LIS09–A:2003

Item No.	Title of Standard	Reference No. and Date
123	Nucleic Acid Sequencing Methods in Diagnostic Laboratory Medicine	CLSI MM9-A:2004
F. Materials		
118	Standard Practice for Marking Medical Devices and Other Items for Safety in the Magnetic Resonance Environment	ASTM F2503-05
G. OB-GYN/Gastroenterology		
36	Mechanical contraceptives—Reusable Natural and Silicone Rubber Contraceptive Diaphragms—Requirements and Tests	ISO 8009:2004(E)
H. Radiology		
135	Medical electrical equipment—Part 2-5: Particular Requirements for the Safety of Ultrasonic Physiotherapy Equipment Ed. 2.0	IEC 60601-2-5:2000
I. Sterility		
163	Sterilization of Medical Devices—Microbiological methods—Part 3: Guidance on Evaluation and Interpretation of Bioburden Data	ANSI/AAMI/ISO 11737-3:2004
164	Sterilization of Medical Devices—Information To Be Provided by the Manufacturer for the Processing of Resterilizable Medical Devices	ANSI/AAMI ST81:2004
165	Cleanrooms and Associated Controlled Environments—Part 5: Operations	ISO 14644-5:2004
166	Cleanrooms and Associated Controlled Environments—Part 7: Separative Devices (Clean Air Hoods, Gloveboxes, Isolators and Mini-Environments)	ISO 14644-7:2004
J. Tissue Engineering		
6	Standard Guide for Assessing Microstructure of Polymeric Scaffolds for Use in Tissue Engineered Medical Products	ASTM F2450-04
7	Standard Guide for Immobilization or Encapsulation of Living Cells or Tissue in Alginate Gels	ASTM F2315-03

#### IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm>. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

#### V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact

person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

#### VI. Electronic Access

In order to receive "Guidance on the Recognition and Use of Consensus Standards" on your FAX machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign. Follow

the remaining voice prompts to complete your request.

You may also obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modifications to the List of Recognized Standards, Recognition List Number: 013" will be available on the CDRH home page. You may access the CDRH home page at <http://www.fda.gov/cdrh>.

You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" through the hyperlink at <http://www.fda.gov/cdrh/stdsprog.html>.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at <http://www.fda.gov/cdrh/fedregin.html>.

## VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 013. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: October 10, 2005.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 05-22267 Filed 11-7-05; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2005D-0344]

#### Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Tinnitus Masker Devices; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Tinnitus Masker Devices." The draft guidance describes a means by which tinnitus masker devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to amend the classification regulations for the tinnitus masker presently classified into class II (special controls: labeling) to designate a special control for these devices. The draft guidance is neither final, nor is it in effect at this time.

**DATES:** Submit written or electronic comments on this draft guidance by February 6, 2006.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Tinnitus Masker Devices" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments concerning this 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>. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Teresa Cygnarowicz, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2980.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to amend the classification regulations for tinnitus masker devices presently classified into class II (special controls: labeling) to designate a special control for the devices. The draft guidance document describes a means by which the device may comply with the requirement of special controls for class II devices. Following the effective date of a final rule based on the proposed rule, any firm submitting a 510(k) premarket notification for the device will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

##### II. Significance of Guidance

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 tinnitus masker devices. 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 an approach satisfies the requirements of the applicable statute and regulations.

##### III. Electronic Access

To receive "Class II Special Controls Guidance Document: Tinnitus Masker Devices" by fax, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1555) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Division of Dockets Management Internet site at <http://www.fda.gov/ohrms/dockets>.

##### IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E), under OMB control number 0910-0120. The labeling provisions addressed in the draft guidance have been approved by OMB under OMB control number 0910-0485.

##### V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic

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

Dated: October 7, 2005.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 05-22268 Filed 11-7-05; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004D-0146]

#### Guidance for Industry: Validation of Analytical Procedures for Type C Medicated Feeds; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#135) entitled "Validation of Analytical Procedures for Type C Medicated Feeds." This guidance represents the agency's current thinking on the characteristics that should be considered during the validation of non-microbiological analytical procedures for the analysis of drugs in Type C medicated feeds included as part of original and supplemental new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) for Type A medicated articles submitted to FDA. This guidance is the first in a series of three guidances that will discuss assay methods for Type C medicated feeds.

**DATES:** Submit written or electronic comments on agency guidance documents at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the 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 guidance document.

#### FOR FURTHER INFORMATION CONTACT:

Mary G. Leadbetter, Center for Veterinary Medicine (HFV-141), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6964, e-mail: [mleadbet@cvm.fda.gov](mailto:mleadbet@cvm.fda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of April 28, 2004 (69 FR 23209), FDA published a notice of availability for a draft guidance entitled "Validation of Analytical Procedures for Type C Medicated Feeds" giving interested persons until July 12, 2004, to comment on the draft guidance. FDA received no comments on the draft guidance and no substantive changes were made in finalizing this guidance document.

##### II. Paperwork Reduction Act of 1995

According to the Paperwork Reduction Act of 1995, a collection of information must display a valid OMB control number. The existing valid OMB control numbers for this information collection are 0910-0032 and 0910-0154. This guidance contains no new collections of information.

##### III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

##### IV. Comments

As with all FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket, and where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be

identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

##### V. Electronic Access

Copies of the guidance document entitled "Validation of Analytical Procedures for Type C Medicated Feeds" may be obtained from the CVM Home Page (<http://www.fda.gov/cvm>) and from the Division of Dockets Management Web site (<http://www.fda.gov/ohrms/dockets/default.htm>).

Dated: October 31, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05-22222 Filed 11-7-05; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

#### Proposed Collection: Indian Health Service Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children OPM—306 Request for Public Comment: 30-Day Notice

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Request for Public Comment: 30-day Proposed Information Collection: Indian Health Service Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children OPM-306.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was published in the August 3, 2005, **Federal Register** (70 51826) and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

**PROPOSED COLLECTION:** *Title:* 0917-0028, "Indian Health Service Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over

Indian Children OPM-306". *Type of Information Collection Request:* Extension of a currently approved collection which expires November 30, 2005. *Type of Information Collection Request:* Extension of a currently approved collection which expires November 30, 2005. *Form Number:* OF-306 Addendum to Declaration for Federal Employment (OF 306) Indian Health Service Child Care & Indian Child Care Worker Positions. *Need and Use of Information Collection:* This is a request for approval of collection information required by section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law 101-630, 104 Stat. 4544, 25 U.S.C. 3201-3211. The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having

regular contact with, or control over, Indian children. Section 3207(b) of the Indian Child Protection and Family Violence Prevention Act was amended by Section 814 of S. 3031, the Native American Laws Technical Corrections Act of 2000, which requires that the regulations prescribing the minimum standards of character ensure that none of the individuals appointed to positions involving regular contact with, or control over Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution, crimes against persons; or offenses committed against children. In addition, 42 U.S.C. 13041 requires each agency of the Federal government and every facility operated by the Federal government (or operated under contract with the Federal government), that hires (or contracts for hire) individuals

involved with children under the age of 18 or child care services to assure that all existing and newly-hired employees undergo a criminal history background check. The background is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an agency of the Federal government, or for a facility or program operated by (or through contract with) the Federal government, in positions involved with the provision to children under the age of 18 or child care services, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child. *Affected Public:* Individual and households. *Type of Respondents:* Individuals. Table 1 below provides the following: Types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

ESTIMATED BURDEN HOURS

42 CFR Part 36	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hrs
Addendum to OF306 Declaration for Federal Employment .....	200	1	0.25 (15 min)	500

\* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

*Request for Comments:* Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response

time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Mrs. Christina Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852-1601, or call non-toll free (301) 443-5938 or send via facsimile to (301) 443-2316, or send your e-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov*.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received on or before 30 days of the date of this publication.

Dated: October 28, 2005.

**Robert G. McSwain,**  
Deputy Director, Indian Health Service.  
[FR Doc. 05-22221 Filed 11-7-05; 8:45 am]

BILLING CODE 4165-16-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Indian Health Service**

[Funding Opportunity Number HHS-2006-IHS-SP-0001] [CFDA Numbers: 93.971, 93.123, and 93.972]

**Health Professions Preparatory, Health Professions Pregraduate and Indian Health Professions Scholarship Programs**

*Announcement Type:* Initial.  
*Key Dates: Application Deadline:* February 28, 2006. *Application Review:* March 27-31, 2006. *Application Notification:* Third week of June 2006. *Award Start Date:* August 1, 2006.

**I. Funding Opportunity Description**

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarships authorized by

section 103 of the Indian Health Care Improvement Act (IHCIA), as amended.

- The Indian Health Professions Pregraduate Scholarships authorized by section 103 of the IHCIA, as amended.

- The Indian Health Professions Scholarships authorized by section 104 of the IHCIA, as amended.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

**II. Award Information**

Awards under this initiative will be administered using the grant mechanism of the IHS.

*Estimated Funds Available:* An estimated \$11.6 million will be available for FY 2006 awards.

*Anticipated Number of Awards:* Approximately 159 awards will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately \$23,619. An estimated 273 awards will be made under the Indian Health Scholarship (Professions) Program. The awards are for 12 months in duration and the average award to a full-time student is for approximately \$35,242. In FY 2006, an estimated \$4,640,000 is available for continuation awards, and an estimated \$6,960,000 is available for new awards.

**Project Period**—The project period for the Health Professions Preparatory Scholarship support is limited to 2 years for full-time students and the part-time equivalent of 2 years, not to exceed 4 years for part-time students. The project period for the Health Professions Pregraduate Scholarship Support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students. The Indian Health Professions

Scholarship support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students.

**III. Eligibility Information**

This announcement is a limited competition for awards made to American Indians (federally recognized Tribal members, state recognized Tribal members, and first and second degree descendants of Tribal members), or Alaska Natives only.

*1. Eligible Applicants*

The Health Professions Preparatory Scholarship awards are made to American Indians (federally recognized Tribal members, state recognized Tribal members, and first and second degree descendants of Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency;
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum; and
- In descending order of Indian eligibility: (1) Enrolled members of federally recognized Tribes, (2) first and second degree Tribal members, and (3) state recognized Tribal members.

The Health Professions Pregraduate Scholarship awards are made to American Indians (federally recognized Tribal members, state recognized Tribal members, and first and second degree Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency;
- Have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a

baccalaureate degree in pre-medicine, pre-dentistry and pre-podiatry; and

- In descending order of Indian eligibility: (1) Enrolled members of federally recognized Tribes, (2) first and second degree Tribal members, and (3) state recognized Tribal members.

The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized Indian Tribe as provided by section 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession (see list in Application Review Information) as defined by section 4(n) of the IHCIA.

*2. Cost Sharing/Matching*

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

**IV. Application and Submission Information**

*1. Address To Request Application Package*

Applicants are responsible for contacting and requesting an application packet from their IHS Area coordinator. They are listed on the IHS Web site at [http://www.ihs.gov/JobCareerDevelop/DHPS/Scholarships/SCoordinator\\_Directory.asp](http://www.ihs.gov/JobCareerDevelop/DHPS/Scholarships/SCoordinator_Directory.asp). This information is listed below. Please review the following list to identify the appropriate IHS Area coordinator for your state. Application packets may be obtained by calling or writing to the following individuals listed below:

IHS area office and states/locality served:	Scholarship coordinator/address:
Aberdeen Area IHS: Iowa ..... Nebraska ..... North Dakota ..... South Dakota ..... Alaska Native Tribal Health Consortium—Alaska	Ms. Kim Lawrence, IHS Area Coordinator, Aberdeen Area IHS, 115 4th Avenue, SE., Aberdeen, SD 57401. Tele: (605) 226-7532.  Ms. Sheila Turner, IHS Area Coordinator, 4000 Ambassador Drive, Anchorage, Alaska 99508. Tele: 1-800-684-8361.
Albuquerque Area IHS: Colorado ..... New Mexico .....	Ms. Shirley Toribio, IHS Area Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE., Albuquerque, MN 87110. Tele: (505) 248-4987.
Bemidji Area IHS: Illinois ..... Indiana ..... Michigan ..... Minnesota ..... Wisconsin .....	Mr. Tony Buckanaga, IHS Area Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW., Room 209, Bemidji, MN 56601. Tele: (218) 444-0486.
Billings Area IHS: Montana ..... Wyoming .....	Mr. Sandy Macdonald, IHS Area Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North Billings, MT 59103. Tele: (406) 247-7210.
California Area IHS:	

IHS area office and states/locality served:	Scholarship coordinator/address:
California ..... Hawaii .....	Ms. Mona Celli, IHS Area Coordinator, HI California Area IHS, 650 Capitol Mall, Suite 7-100, Sacramento, CA 95814. Tele: (916) 930-3981.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Shirley Toribio, IHS Area Coordinator, Nashville Area IHS, 5300 Homestead Road, NE., Albuquerque, MN 87110. Tele: 1-800-382-3027.
Navajo Area IHS: Arizona .....	Ms. Roselinda Allison, IHS Area Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515. Tele: (928) 871-1358.
Oklahoma City Area IHS: Kansas .....	Mr. Jim Ingram, IHS Area Coordinator, Oklahoma City Area IHS, Five Corporate Plaza, 3625 N.W. 56th Street, Oklahoma City, Oklahoma 73112. Tele: (580) 276-5983.
Phoenix Area IHS: Arizona ..... Nevada ..... Utah .....	Mr. Al Peyketewa, IHS Area Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #510, Phoenix, AZ 85004. Tele: (602) 364-5252.
Portland Area IHS: Idaho ..... Oregon, ..... Washington .....	Ms. Athena Bezahaloni, IHS Area Coordinator, Portland Area IHS, 1220 SW. Third Area IHS, Rm. 440e, Portland, OR 97204-2892. Tele: (503) 326-2625.
Tucson Area IHS: Arizona ..... Texas .....	Ms. Reanetta Siqueros, IHS Area Coordinator, Tucson Area IHS, 7900 South "J." Stock Rd., Tucson, AZ 85746. Tele: (520) 295-2440.

2. Content and Form of Application Submission

Each applicant will be responsible for submitting a completed application and 1 copy (Forms IHS-856-1, through 856-8) to their IHS Area Coordinator. Electronic applications are not being accepted for this cycle. The application will be considered complete if the following documents (original and 1 copy) are included.

- Completed Signed Application Checklist.
- Original Signed Complete Application Form IHS-856 (For Continuation Students-Data Sheet in place of IHS-856).
- Current Letter of Acceptance from College/Proof of Application to Health Professions Program.
- Official Transcripts for All Colleges.
- Cumulative GPA: Applicants Calculation.
- Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA Certification: Form 4432-Category A or D, whichever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially

designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official, or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

B. If you are a member of a Tribe terminated since 1940 or a State recognized Tribe, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or state recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the state in which the Tribe is located in accordance with the law of that state.

C. If you are not a Tribal member but are a natural child or grandchild of a Tribal member, you must submit: (1) Evidence of that fact, e.g., your birth certificate and/or your parent's birth certificate showing the name of the Tribal member; and (2) evidence of your

parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

Note: If you meet the criteria of B or C you are eligible only for the Preparatory or Pregraduate Scholarships.

- Two Faculty/Employer Evaluations with original signature.
  - Reasons for Requesting Scholarship.
  - Delinquent Debt Form.
  - 2006 W-4 Form with original signature.
  - Course Curriculum Verification with original signature.
  - Acknowledgment Card.
  - Curriculum for Major.
- Health Professions Applicants Only:
- Health Related Experience (MPH only)—Optional Form

3. Submission Dates and Times

*Application Receipt Date:* The application deadline for new applicants is Tuesday, February 28, 2006.

Applications (original and 1 copy) shall be considered as meeting the deadline if they are received by the appropriate IHS Area Coordinator on the deadline date or postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or

U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and will not be considered for funding. Once the application is received, the applicant will receive an "Acknowledge of Receipt of Application" (IHS-815) card that is included in the application packet.

#### 4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

#### 5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with 42 CFR 136.320, 136.330 and 136.370 incorporated in the application materials; and for Health Professions Scholarship Program for Indians.

#### 6. Other Submission Requirements

New Applicants are responsible for contacting and requesting an application packet from their IHS Area Coordinator. Electronic applications are not being accepted for this award cycle. The Division of Grants Operations will mail continuation students an application packet and if you do not receive this information please contact your IHS Area Coordinator to request a continuation application.

### V. Application Review Information

#### 1. Criteria

Applications will be reviewed and scored with the following criteria:

- Needs of the IHS (Health Work Force needs in Indian Country). Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health work force needs. Applications for each health career category are reviewed and ranked separately.
- Academic Performance (40 points). Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgement of the applicant's achievement. Health

Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

- Faculty/Employer Recommendations (30 points). Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's potential in the chosen health related professions.

- Stated Reasons for Asking for the Scholarship and Stated Career Goals (30 points). Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. The applicant's narrative will be judged on how well it is written and its content.

- Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

- Priority Categories. The following is a list of health professions that will be funded in each scholarship program in FY 2006.

- Health Professions Preparatory Scholarships.

A. Pre-Clinical Psychology (Jr & Sr undergraduate years).

B. Pre-Dietetics.

C. Pre-Engineering.

D. Pre-Medical Technology.

E. Pre-Nursing.

F. Pre-Occupational Therapy.

G. Pre-Pharmacy.

H. Pre-Physical Therapy (Jr and Sr undergraduate years).

I. Pre-Sanitarian.

J. Pre-Social Work (Jr and Sr undergraduate years).

- Health Professions Pregraduate Scholarships.

A. Pre-Dentistry.

B. Pre-Medicine.

C. Pre-Podiatry

- Indian Health Scholarships (Professions).

A. Chemical Dependency Counseling: Baccalaureate and Masters Level.

B. Clinical Psychology: Ph.D. Program.

C. Coding Specialist.

D. Counseling Psychology: Ph.D. Program.

E. Dental Hygiene: B.S.

F. Dentistry: D.D.S. or D.M.D.

G. Diagnostic Radiology Technology: Certificate, Associate, and B.S.

H. Dietitian: B.S.

I. Environmental Health & Engineering: B.S.

J. Health Care Administration: Bachelors & Masters Level.

K. Health Education: Bachelors & Masters Level.

L. Health Records: R.H.I.T and R.H.I.A.

M. Injury Prevention Specialist: Certificate.

N. Medical Technology: B.S.

O. Medicine: Allopathic and Osteopathic.

P. Nurse: Associate & Bachelor

Degrees & advanced degrees in Psychiatry, Geriatric, Women's Health, Pediatric Nursing, Nurse Anesthetist, & Nurse Practitioner.

\*(Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act.)

Q. Occupational Therapy: B.S.

R. Optician: Associate degree.

S. Optometry: O.D.

T. Pharmacy: Pharm D.

U. Physician Assistant: PAC.

V. Physical Therapy Assistant: Associate degree.

W. Physical Therapy: M.S. and D.P.T.

X. Podiatry: D.P.M.

Y. Public Health: M.P.H. only (Applicants must be enrolled or accepted in a school of public health with concentration in Epidemiology).

Z. Public Health Nutrition: Masters Level only.

AA. Respiratory Therapy: Associate.

BB. Social Work: Masters Level only (Direct Practice and Clinical concentrations).

CC. Ultrasonography (Prerequisite: Diagnostic Radiology Technology).

#### 2. Review and Selection Process

The applications will be reviewed & scored by the IHS Scholarship Programs' Application Review Committee appointed by the IHS. Each reviewer will not be allowed to review an application from his/her area or his/her own Tribe. Each application will be reviewed by three reviewers. The average score of the three reviews provide the final Ranking Score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship, health discipline, date of graduation, and score. If several students have the same date of graduation and score within the same discipline, computer ranking list will randomly sort and will not be sorted by alphabetical name. Selections for recommendations to the Director, IHS, are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

## VI. Award Administration Information

### 1. Award Notices

It is anticipated that applicants will be notified in writing during the third week of June, 2006. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reasons the application was not successful and provide the name of the IHS official to contact if more information is desired.

### 2. Administrative and National Policy Requirements

Regulations at 42 CFR 136.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCA, as amended by the Indian Health Care Amendment of 1988, Pub. L. 100-713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded.

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 136.330.

Recipients shall incur a service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 2541) which shall be met by service:

- (1) In the Indian Health Service;
- (2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93-638) and its amendments;
- (3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94-437) and its amendments; and
- (4) In a private practice option of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number (51%) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 102-573), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 2541) by a program specified in options (1)-(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Health Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCA, Pub. L. 94-437, as amended by Pub. L. 100-713, and Pub. L. 102-573.

### 3. Reporting

#### Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship recipient awarded under the Health Professions Scholarship Program of the Indian Health Care Improvement Act maintain a 2.0 cumulative grade point average (GPA) each semester/quarter and be a full-time student (minimum of 12 credit hours considered by your school as full-time). A recipient of a scholarship under the Health Professions Pre-Graduate and Health Professions Preparatory Scholarship authority must maintain a good academic standing each semester/quarter and be a full time student (minimum of 12 credit hours or the number of credit hours considered by your school as full-time). In addition to the two requirements stated above, a Health Professions Scholarship program grantee must be enrolled in an approved/accredited school for a health professions degree.

Part-time students for the three scholarship programs must also maintain a 2.0 cumulative GPA and must take at least 6 credit hours each semester/quarter but less than the number of hours considered full-time by your school. Scholarship grantees must be approved for part-time status at the time of scholarship award. Scholarship grantees may not change from part-time status to full-time status or vice versa in the same academic year.

The following reports must be sent to the IHS Scholarship Program at the identified time frame. Each scholarship grantee will be provided with an IHS Scholarship Handbook where the below needed reports are located. If a scholarship grantee fails to submit these reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

#### A. Recipient's Enrollment and Initial Progress Report

Within thirty (30) days from the beginning of each semester or quarter, scholarship grantees must submit a Recipient's Enrollment and Initial Progress Report (Form F-02 of the student handbook).

#### B. Transcripts

Within thirty (30) days from the end of each academic period, *i.e.*, semester, quarter, or summer session, scholarship grantees must submit an Official Transcript showing the results of the classes taken during that period.

#### C. Notification of Academic Problem/Change

If at any time during the semester/quarter, scholarship grantees are advised to reduce the number of credit hours for which they are enrolled below the minimum of 12 (or the number of hours considered by their school as full time) for a full-time student or at least 6 hours for part-time students; or if they experience academic problems, they must submit this report (page F-04 of student handbook).

#### D. Change of Status

- **Change of Academic Status.** Scholarship Grantees must immediately notify the IHS Area Coordinator if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

- **Change of Health Discipline.** Scholarship Grantees may not change from the approved IHS Scholarship Program health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

- **Change in Graduation Date.** Any time that a change occurs in a scholarship grantee's expected graduation date, they must notify their IHS Area Coordinator immediately in writing. Justification must be attached from the school advisor.

## VII. Agency Contacts

Please address application inquiries to the appropriate IHS Area Coordinator. Other programmatic inquiries may be addressed to Mr. Jess Brien, Chief, Scholarship Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443-6197. (This is not a toll free number.) For grants information, contact the Grants Scholarship Coordinator, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852;

Telephone (301) 443-0243. (This is not a toll-free number).

### VIII. Other Information

#### *Access to Quality Health Services*

There are primary care objectives that will be enhanced through this grant program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2010*, (Full Report; Stock No. 017-001-00474-0) or *Healthy People 2010* (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 [Telephone (202) 783-3238].

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2006-2007 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: October 28, 2005.

**Robert G. McSwain,**

*Deputy Director, Indian Health Service.*

[FR Doc. 05-22166 Filed 11-7-05; 8:45 am]

BILLING CODE 4165-16-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

[Docket Nos. TSA-2004-19166 and TSA-2004-17982]

#### **Privacy Act of 1974: System of Records; Transportation Security Threat Assessment System (T-STAS) and Registered Traveler (RT) Operations Files**

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice to alter two existing systems of records; request for comments.

**SUMMARY:** TSA is altering two existing systems of records under the Privacy Act of 1974. The revisions affect the Transportation Security Threat Assessment System (T-STAS), DHS/

TSA 002, and Registered Traveler (RT) Operations Files, DHS/TSA 015, and will update the "Categories of individuals covered by the system" section for both systems, and the "Categories of records in the system" section for the T-STAS system.

**DATES:** Submit comments by December 8, 2005.

**ADDRESSES:** You may submit comments, identified by the TSA docket numbers to this rulemaking, using any one of the following methods:

*Comments Filed Electronically:* You may submit comments through the docket Web site at <http://dms.dot.gov>. You also may submit comments through the Federal eRulemaking portal at <http://www.regulations.gov>.

*Comments Submitted by Mail, Fax, or In Person:* Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001; Fax: 202-493-2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:** Lisa S. Dean, Privacy Officer, Office of Transportation Security Policy, TSA-9, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-3947; facsimile (571) 227-2555.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

TSA invites interested persons to participate by submitting written comments, data, or views. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received, except for comments containing confidential information and sensitive security information (SSI)<sup>1</sup>, TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

#### *Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments*

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place such comments in the public docket, but rather, will handle these comments in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

#### *Reviewing Comments in the Docket*

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m.,

<sup>1</sup> "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under **ADDRESSES**. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

#### Availability of Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting TSA's Law and Policy Web page at <http://www.tsa.gov> and accessing the link for "Law and Policy" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number(s) of this document.

#### Background

TSA is altering two existing systems of records under the Privacy Act of 1974. The first, the Transportation Security Threat Assessment System (T-STAS) (DHS/TSA 002), facilitates the performance of threat assessments and employment investigations on individuals who require special access to the transportation system, and was last amended in a notice published in the **Federal Register** on December 10, 2004 (69 FR 71837).

The second, the Registered Traveler (RT) Operations Files (DHS/TSA 015), relates to a pilot project designed to positively identify certain travelers who volunteer to participate in the program. The program may expedite the pre-boarding process and improve allocation of TSA resources. Information concerning the RT program was last published in the **Federal Register** on June 1, 2004 (69 FR 30948).

TSA is in the process of improving its direct access to certain governmental databases used in performing security threat assessments in order to more efficiently perform such assessments. The improved access will result in the individuals covered by these databases being added to TSA record systems. Accordingly, TSA is amending the "Categories of individuals covered by the system" portions of T-STAS and RT systems of records by adding, at the end of the list of individuals, a new category to include: "Known or suspected terrorists identified in the Terrorist Screening Database (TSDB) of the

Terrorist Screening Center (TSC); individuals identified by TSA who are on the Selectee List because they pose a viable threat to civil aviation or national security; and individuals on classified and unclassified governmental terrorist, law enforcement, immigration, or intelligence databases, including databases maintained by the Department of Defense, National Counterterrorism Center, or Federal Bureau of Investigation."

TSA is also making further amendments to the "Categories of individuals covered by the system" and to the "Categories of records in the system" in the T-STAS system, which it is not making to the RT system, by expanding and clarifying various sections as follows:

(1) Adding a new category (l) to the categories of individuals, to expressly include individuals seeking to become, or qualified as, known shippers. These individuals are currently covered by category (g) "Other individuals who are connected to the transportation industry for whom TSA conducts security threat assessments to ensure transportation security," but express identification in a new category (l) will clarify that this system covers these individuals.

(2) Adding the term "shipping venues" to the introductory paragraph of the categories of individuals, and revising category (9) of "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" section to reflect that TSA will disclose information to air carriers and indirect air carriers regarding individuals who contract for, or seek access to, transportation infrastructure or assets.

(3) Including in the introductory paragraph of the categories of individuals, individuals seeking, or being provided access to, Sensitive Security Information or Classified information provided in connection with transportation security matters.

(4) Modifying the first sentence of "Categories of individuals covered by this system," and category (a) of the "Purpose(s)" sections to clarify that the system covers all types of evaluations performed for security purposes.

(5) Revising categories (d) and (p), and adding a new category (u) at the end of the list of records in the "Categories of records in the system," as follows:

- Current category (d) covers various forms of Government-issued licensing or identification information. The category is being revised to expressly reflect the inclusion of citizenship and immigration records, alien registration numbers, and visa information. These

items are currently listed in category (o) and will be repeated in (d) to clarify that such records are not limited to travel documents, as they are listed in category (o).

- Current category (p) covers criminal history records obtained from the Federal Bureau of Investigation (FBI). This category is being revised to include other criminal history records, such as Department of Defense and some state and local criminal history records. While these records are described in existing category of record (r) "Other information provided by Federal, State, and local government agencies or private entities," TSA has determined that amending the category of records will clarify that criminal history records from several sources may be part of this system.

- TSA is adding a new category (u) to include suitability testing and results of such testing. This expansion of the category of records is intended to cover any tests that transportation-related employees or contractors may be required to undergo.

The complete revised notice of the systems of records follows.

#### System of Records DHS/TSA 002

##### SYSTEM NAME:

Transportation Security Threat Assessment System (T-STAS).

##### SECURITY CLASSIFICATION:

Classified, Sensitive.

##### SYSTEM LOCATION:

Records are maintained at the Transportation Security Administration (TSA) Headquarters, 601 South 12th Street, Arlington, VA 22202. Some records may also be maintained at the offices of TSA contractors, or in TSA field offices.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who undergo a security threat assessment, employment investigation, or other evaluation performed for security purposes, in order to obtain access to the following: transportation infrastructure or assets, such as terminals, facilities, pipelines, railways, mass transit, vessels, aircraft, or vehicles; restricted airspace; passenger baggage; cargo; shipping venues; Sensitive Security Information or Classified information provided in connection with transportation security matters; or transportation-related instruction or training (such as flight training). This includes, but is not limited to, the following individuals:

(a) Individuals who require or seek access to airport secured, sterile, or a

Security Identification Display Area (SIDA); have or seek unescorted access authority to these areas; have or seek authority to grant others unescorted access to these areas; have or seek regular escorted access to these areas; or are seeking identification that is evidence of employment at the airport.

(b) Individuals who have or are seeking responsibility for screening passengers or carry-on baggage, and those persons serving as immediate supervisors and the next supervisory level to those individuals, other than employees of the TSA who perform or seek to perform these functions.

(c) Individuals who have or are seeking responsibility for screening checked baggage or cargo, and their immediate supervisors, and the next supervisory level to those individuals, other than employees of the TSA who perform or seek to perform these functions.

(d) Individuals who have or are seeking the authority to accept checked baggage for transport on behalf of an aircraft operator that is required to screen passengers.

(e) Pilots, copilots, flight engineers, flight navigators, airline personnel authorized to fly in the cockpit, relief or deadheading crewmembers, cabin crew, and other flight crew for an aircraft operator or foreign air carrier that is required to adopt and carry out a security program.

(f) Flight crews and passengers who request waivers of temporary flight restrictions (TFRs) or other restrictions pertaining to airspace.

(g) Other individuals who are connected to the transportation industry for whom TSA conducts security threat assessments to ensure transportation security.

(h) Individuals who have or are seeking unescorted access to cargo in the transportation system.

(i) Individuals who are owners, officers, or directors of an indirect air carrier or a business seeking to become an indirect air carrier.

(j) Aliens or other individuals designated by TSA who apply for flight training or recurrent training.

(k) Individuals transported on all-cargo aircraft, including aircraft operator or foreign air carrier employees and their family members and persons transported for the flight.

(l) Individuals seeking to become, or qualified as, known shippers.

(m) Known or suspected terrorists identified in the Terrorist Screening Database (TSDB) of the Terrorist Screening Center (TSC); individuals identified by TSA who are on the Selectee List because they pose a viable

threat to civil aviation or national security; and individuals on classified and unclassified governmental terrorist, law enforcement, immigration, or intelligence databases, including databases maintained by the Department of Defense, National Counterterrorism Center, or Federal Bureau of Investigation.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

TSA's system may contain any, or all, of the following information regarding individuals covered by this system:

(a) Full name (including aliases or variations of spelling).

(b) Gender.

(c) Current and historical contact information (including, but not limited to, address information, telephone number, and e-mail).

(d) Government-issued licensing or identification information (including, but not limited to, social security number; pilot certificate information, including number and country of issuance; current and past citizenship information; immigration status; alien registration numbers; visa information; and other licensing information for modes of transportation).

(e) Date and place of birth.

(f) Name and information, including contact information and identifying number (if any) of the airport, aircraft operator, indirect air carrier, maritime or land transportation operator, or other employer or entity that is employing the individual, or submitting the individual's information, or sponsoring the individual's background check/threat assessment.

(g) Physical description, fingerprint and/or other biometric identifier, and photograph.

(h) Date, place, and type of flight training or other instruction.

(i) Control number or other unique identification number assigned to an individual or credential.

(j) Information necessary to assist in tracking submissions, payments, and transmission of records.

(k) Results of any analysis performed for security threat assessments and adjudications.

(l) Other data as required by Form FD 258 (fingerprint card) or other standard fingerprint cards used by the Federal Government.

(m) Information provided by individuals covered by this system in support of their application for an appeal or waiver.

(n) Flight information, including crew status on board.

(o) Travel document information (including, but not limited to, passport information, including number and

country of issuance; and current and past citizenship information and immigration status, any alien registration numbers, and any visa information).

(p) Criminal history records.

(q) Data gathered from foreign governments or entities that is necessary to address security concerns in the aviation, maritime, or land transportation systems.

(r) Other information provided by Federal, State, and local government agencies or private entities.

(s) The individual's level of access at an airport.

(t) The individual's military service history.

(u) Suitability testing and results of such testing.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 5103a, 40103(b)(3), 40113(a), 44903(b), 44936, 44939, 46105.

#### PURPOSE(S):

(a) Performance of security threat assessments, employment investigations, and evaluations performed for security purposes that Federal statutes and/or TSA regulations authorize for the individuals identified in "Categories of individuals covered by the system," above.

(b) To assist in the management and tracking of the status of security threat assessments, employment investigations, and evaluations performed for security purposes.

(c) To permit the retrieval of the results of security threat assessments, employment investigations, and evaluations performed for security purposes; including criminal history records checks and searches in other governmental, commercial, and private data systems, performed on the individuals covered by this system.

(d) To permit the retrieval of information from other terrorist-related, law enforcement and Intelligence databases on the individuals covered by this system.

(e) To track the fees incurred, and payment of those fees, by the airport operators, aircraft operators, maritime and land transportation operators, flight students, and others, where appropriate, for services related to security threat assessments, employment investigations, and evaluations performed for security purposes.

(f) To facilitate the performance of security threat assessments and other investigations that TSA may conduct to ensure transportation security.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) To the United States Department of Transportation, its operating administrations, or the appropriate State or local agency, when relevant or necessary to—

(a) Ensure safety and security in any mode of transportation;

(b) Enforce safety- and security-related regulations and requirements;

(c) Assess and distribute intelligence or law enforcement information related to transportation security;

(d) Assess and respond to threats to transportation;

(e) Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;

(f) Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or

(g) The issuance, maintenance, or renewal of a license, endorsement, certificate, contract, grant, or other benefit.

(2) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where TSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(3) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency regarding individuals who pose, or are suspected of posing, a risk to transportation or national security.

(4) To contractors, grantees, experts, consultants, volunteers, or other like persons, when necessary to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

(5) To a Federal, State, local, tribal, territorial, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual; or the issuance of a security clearance, license, endorsement, contract, grant, waiver, credential, or other benefit.

(6) To a Federal, State, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a TSA decision concerning the hiring or retention of an employee; the issuance of a security clearance, license, endorsement,

contract, grant, waiver, credential, or other benefit.

(7) To international and foreign governmental authorities, in accordance with law and formal or informal international agreement.

(8) To third parties during the course of a security threat assessment, employment investigation, or adjudication of a waiver or appeal request, to the extent necessary to obtain information pertinent to the assessment, investigation, or adjudication.

(9) To airport operators, indirect air carriers, aircraft operators, flight school operators, and maritime and land transportation operators or contractors about individuals; when relevant to the individual's employment, application, contract, issuance of credentials or clearances, acceptance for flight training, or access to transportation infrastructure or assets.

(10) To a Federal, State, local, tribal, territorial, foreign, or international agency so that TSA may obtain information to conduct security threat assessments or employment investigations and to facilitate any associated payment and accounting.

(11) To the Department of Justice (DOJ) or other Federal agency in the review, settlement, defense, and prosecution of claims, complaints, and lawsuits involving matters over which TSA exercises jurisdiction; or when conducting litigation, or in proceedings, before any court, adjudicative or administrative body, when: (a) TSA; or (b) any employee of TSA in his/her official capacity; or (c) any employee of TSA in his/her individual capacity, where DOJ or TSA has agreed to represent the employee; or (d) the United States or any agency thereof, is a party to the litigation, or has an interest in such litigation, and TSA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which TSA collected the records.

(12) To a congressional office from the record of an individual, in response to an inquiry from that congressional office made at the request of the individual.

(13) To the National Archives and Records Administration, or other appropriate Federal agency, pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

In electronic storage media and hard copy.

**RETRIEVABILITY:**

Information can be retrieved by name, social security number, identifying number of the submitting or sponsoring entity, other case number assigned by TSA or other entity/agency, biometric, or a unique identification number, or any other identifying particular assigned or belonging to the individual.

**SAFEGUARDS:**

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include some or all of the following: restricting access to those authorized with a need-to-know; using locks, alarm devices, and passwords; compartmentalizing databases; auditing software; and encrypting data communications.

**RETENTION AND DISPOSAL:**

National Archives and Records Administration approval is pending for the records in this system.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director for Compliance, Transportation Threat Assessment & Credentialing Office, TSA-19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220.

**NOTIFICATION PROCEDURE:**

To determine whether this system contains records relating to you, write to the System Manager identified above.

**RECORD ACCESS PROCEDURE:**

Same as "Notification Procedure," above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the Department of Homeland Security Privacy Act regulations on verification of identity (6 CFR 5.21(d)).

**CONTESTING RECORD PROCEDURE:**

Same as "Notification Procedure" and "Record Access Procedure," above.

**RECORD SOURCE CATEGORIES:**

Information is collected from individuals subject to a security threat assessment, employment investigation, or other security analysis; from aviation, maritime, and land transportation

operators, flight schools, or other persons sponsoring the individual; and any other persons, including commercial entities that may have information that is relevant or necessary to the assessment or investigation. Information about individuals is also used or collected from domestic and international intelligence sources and other governmental, private, and public databases. The sources of information in the criminal history records obtained from the Federal Bureau of Investigation (FBI) are set forth in the Privacy Act system of records notice "JUSTICE/FBI-009."

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Portions of this system are exempt under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6). In addition, to the extent a record contains information from other exempt systems of records, TSA will rely on the exemptions claimed for those systems.

**DHS/TSA 015**

**SYSTEM NAME:**

Registered Traveler (RT) Operations Files.

**SECURITY CLASSIFICATION:**

Classified, sensitive.

**SYSTEM LOCATION:**

Records will be maintained at TSA Headquarters in Arlington, Virginia; at other authorized TSA or DHS secure facilities, as necessary; and at a digital safe site managed by a Government contractor.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

(a) Individuals who voluntarily apply to participate in the RT Pilot Program, who agree to provide personal information to TSA that may be used as part of a security assessment, and who may or may not meet the eligibility criteria as determined by TSA;

(b) Authorized Federal law enforcement officers (LEOs);

(c) Individuals who participate in the Federal Flight Deck Officer (FFDO) program; and

(d) Known or suspected terrorists identified in the Terrorist Screening Database (TSDB) of the Terrorist Screening Center (TSC); individuals identified by TSA who are on the Selectee List because they pose a viable threat to civil aviation or national security; and individuals on classified and unclassified governmental terrorist, law enforcement, immigration, or intelligence databases, including databases maintained by the Department of Defense, National Counterterrorism Center, or Federal Bureau of Investigation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes some, or all, of the following:

- (a) Full name.
- (b) Current home address.
- (c) Current home phone number.
- (d) Current cell phone number (if applicable).
- (e) Social security number.
- (f) Date of birth.
- (g) Place of birth.
- (h) Nationality.
- (i) Gender.
- (j) Prior home addresses.
- (k) Arrival date in United States (non-U.S. citizens only).
- (l) Digital photo.
- (m) Reference biometric (*i.e.* fingerprint(s), iris scan, facial geometry, hand geometry, handwriting/signature, others).
- (n) Unique identification record number.
- (o) Unique token or credential serial number.
- (p) Security assessments.
- (q) Information pertaining to adjudication results.
- (r) RT eligibility status.
- (s) Token or credential issue date.
- (t) Token or credential expiration date.
- (u) Information and data provided by Federal, State, and local government agencies and foreign governments that is necessary to conduct a security assessment to determine if an individual poses a potential threat to aviation security.
- (v) Authorized Federal LEOs may have a Federal LEO code name and unique administrative code number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

49 U.S.C. 114; Sec. 109(a)(3), Aviation and Transportation Security Act (ATSA), Pub. L. 107-71.

**PURPOSE(S):**

The system utilized during the RT Pilot Program will facilitate the development, testing, and administration of the RT concept, including conducting security assessments on program applicants; additional security assessments may or may not be conducted on authorized LEOs, FFDOs, and other authorized government officials. The purpose of the RT pilot program is to—

- (1) Pre-screen and positively identify volunteer travelers using advanced identification technologies, including biometrics, which may expedite the pre-boarding process for the traveler and improve the allocation of TSA's security resources on individuals who may pose a security threat;
- (2) Prevent potential threats from individuals who are impersonating

Federal LEOs and seek to board commercial aircraft while armed;

(3) Assist in the management and tracking of the status of security assessments for applicants and those deemed eligible for the Registered Traveler Pilot Program;

(4) Permit the retrieval of the results of security assessments, including criminal history records checks and searches in other governmental identification systems, performed on the individuals covered by this system;

(5) Permit the retrieval of information from other law enforcement and intelligence databases on individuals covered by this system; and

(6) Identify potential threats to transportation security, uphold and enforce the law, and ensure public safety.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) To the United States Department of Transportation, its operating administrations, or the appropriate State or local agency, when relevant or necessary to—

- (a) Ensure safety and security in any mode of transportation;
- (b) Enforce safety and security related regulations and requirements;
- (c) Assess and distribute intelligence or law enforcement information related to transportation security;
- (d) Assess and respond to threats to transportation;
- (e) Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;
- (f) Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or
- (g) The issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

(2) To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where TSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(3) To contractors, grantees, experts, consultants, or volunteers, when necessary to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

(4) To airports and aircraft operators, to the extent necessary to identify

Registered Travelers and ensure the proper ticketing, security screening, and boarding of those passengers.

(5) To a Federal, State, local, tribal, territorial, foreign, or international agency, in response to queries regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(6) To the Department of State and other Intelligence Community agencies, to further the mission of those agencies relating to persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; a threat to aviation safety, civil aviation, or national security.

(7) To international and foreign governmental authorities, in accordance with law and formal or informal international agreement.

(8) To authorized law enforcement and other Government agencies, as necessary, to conduct the security assessments and, if applicable, to facilitate payment and accounting.

(9) To the Department of Justice (DOJ) in review, settlement, defense, and prosecution of claims, complaints, and lawsuits involving matters over which TSA exercises jurisdiction.

(10) To the DOJ or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) TSA, or (b) any employee of TSA in his/her official capacity, or (c) any employee of TSA in his/her individual capacity where DOJ or TSA has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and TSA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which TSA collected the records.

(11) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

(12) To the General Services Administration and the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(13) To the Attorney General of the United States or his/her official designee, when information indicates that an individual meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence

Prevention Act. In case of a dispute concerning the validity of the information provided by TSA to the Attorney General, or his/her designee, it shall be a routine use of the information in this system of records to furnish records or information to the national Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on magnetic disc, tape, digital media, CD-ROM, bar code, magnetic stripe, optical memory stripe, disk, integrated circuit chip, and/or other approved technologies and may also be retained in hard copy format in secure file folders.

**RETRIEVABILITY:**

Records may be retrieved by the applicant's name, unique identification record number, or other unique administrative identifier; paper records, where applicable, are retrieved alphabetically by name or other unique administrative identifier.

**SAFEGUARDS:**

Information in this system is safeguarded in accordance with applicable rules and policies, including any applicable TSA and DHS automated systems security and access policies. The computer system from which records could be accessed is policy and security based, meaning access is limited to those individuals who require it to perform their official duties. The system also maintains a real-time auditing function of individuals who access the system. Classified information is appropriately stored in a secured facility, secured databases, and containers and in accordance with other applicable requirements, including those pertaining to classified information.

**RETENTION AND DISPOSAL:**

Records in this system will be retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 20.

**SYSTEM MANAGER AND ADDRESS:**

Registered Traveler Program Manager, Transportation Threat Assessment & Credentialing, TSA-19, Transportation

Security Administration, 601 South 12th Street, Arlington, VA 22202-4220.

**NOTIFICATION PROCEDURE:**

To determine if this system contains a record relating to you, write to the system manager at the address indicated above and provide your full name, current address, date of birth, place of birth, and a description of information that you seek, including the time frame during which the record(s) may have been generated. You may also provide your Social Security Number or other unique identifier(s), but you are not required to do so. Individuals requesting access must comply with the Department of Homeland Security's Privacy Act regulations on verification of identity (6 CFR 5.21(d)).

**RECORD ACCESS PROCEDURE:**

Same as "notification procedure," above.

**CONTESTING RECORD PROCEDURE:**

Same as "notification procedure," above.

**RECORD SOURCE CATEGORIES:**

Information contained in this system may be obtained from the RT applicant, law enforcement and intelligence agency record systems, government and commercial databases, military and National Guard records, and other Department of Homeland Security systems.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Portions of this system are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). In addition, to the extent a record contains information from other exempt systems of records, TSA will rely on the exemptions claimed for those systems.

Issued in Arlington, Virginia, on October 26, 2005.

**Lisa S. Dean,**

*Privacy Officer.*

[FR Doc. 05-22124 Filed 11-7-05; 8:45 am]

**BILLING CODE 4910-62-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4975-N-36]

**Notice of Proposed Information Collection: Comment Request; Real Estate Settlement Procedures Act (RESPA) Web Site Complaint Questionnaire**

**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:* January 9, 2006.

**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 8003, Washington, DC 20410 or [Wayne\\_Eddins@hud.gov](mailto:Wayne_Eddins@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Ivy Jackson, Director, Office of Interstate Land Sales and Real Estate Settlement Procedures Act, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0502 (this is not a toll free number) for copies of the proposed forms and other available information.

**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:* Real Estate Settlement Procedures Act (RESPA) Web site Complaint Questionnaire.

*OMB Control Number, if applicable:* 2502-Pending.

*Description of the need for the information and proposed use:* The Real Estate Settlement Procedures Act

insures that consumers are provided with greater and timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by abusive practices. The RESPA Web site Complaint Questionnaire will provide for a common website for consumers and settlement service providers to assist in the enforcement of RESPA. Members of the public may submit complaints to HUD. The Federal Government will use the disclosed information to investigate alleged violations of RESPA regulations by settlement service providers.

*Agency form numbers, if applicable:* HUD-1974.

*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 number of respondents is estimated to be 1,246, generating approximately 1,869 responses annually. The frequency of response is on occasion, and the estimated time needed to prepare the response is approximately 0.33 hours, for total annual burden hours of 617.

*Status of the proposed information collection:* This is a new collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 31, 2005.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 05-22154 Filed 11-7-05; 8:45 am]

**BILLING CODE 4210-27-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4975-N-37]

### Notice of Proposed Information Collection: Comment Request; Compromise/Settlement Offer, Personal Financial Statement, Pre-Authorized Debit (PAD), Repayment Agreement, and Compromise Offer/Partial Approval Worksheet

**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:* January 9, 2006.

**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](mailto:Wayne_Eddins@hud.gov).

#### FOR FURTHER INFORMATION CONTACT:

Lester J. West, Director, Albany Financial Operations Center, Department of Housing and Urban Development, telephone (518) 464-4200 extension 4206 (this is not a toll free number) for copies of the proposed forms and other available information.

**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:* Compromise/Settlement Offer, Personal Financial Statement, Pre-Authorized Debit (PAD), Repayment Agreement, and Compromise Offer/Partial Approval Worksheet.

*OMB Control Number, if applicable:* 2502-0483.

*Description of the need for the information and proposed use:* HUD uses the information to analyze debtors' financial positions and then approve settlements, repayment agreements, and pre-authorized electronic payments to HUD.

*Agency form numbers, if applicable:* HUD-56141, HUD-56142, HUD-56146, HUD-55509, and HUD-92090.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of hours needed to prepare the information collection is 847, the number of respondents is 800 generating approximately 1,640 annual responses, the frequency of response is on occasion, and the estimated time needed to prepare the response varies from 5 to 30 minutes.

*Status of the proposed information collection:* This is a revision of a currently approved collection. This revision seeks to consolidate the currently approved information collection requirements of 2502-0424 (Pre-Authorization Debit (PAD) Request) and 2502-0098 (Borrower's Personal Financial Statement for Compromise/Settlement), because all the information collected is related to borrowers who owe money to HUD and HUD's attempts to collect that money.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 28, 2005.

**Frank L. Davis,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 05-22155 Filed 11-7-05; 8:45 am]

**BILLING CODE 4210-27-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4972-N-08]

### Notice of Proposed Information Collection: Comment Request, Continuum of Care Homeless Assistance Grant Application

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, 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:* January 9, 2006.

**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: Sheila Jones, Reports Liaison Officer, Department of Housing Urban and

Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Director, Office of Special Needs Assistance Programs, (202) 708-4300 (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 (55 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 of information is necessary for the proper performance of the functions of the affected 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:* Continuum of Care Homeless Assistance Grant Application.

*OMB Control Number, if applicable:* 2506-0112.

*Description of the need for the information and proposed use:*

Information is to be used in the rating, ranking, and selection of proposals submitted to HUD by State and local governments, public housing authorities, and nonprofit organizations for awarded funds under the Continuum of Care Homeless Assistance programs.

*Agency form numbers:* HUD-40076-COC, HUD-40076-2, HUD-40085-2, SF-424, HUD-SF424SUPP, HUD-2992, HUD-2880, HUD-96010, HUD-92041.

*Members of affected public:* Eligible applicants interested in applying for the Continuum of Care Homeless Assistance funds.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

Number of Respondents: 12,770.

Frequency of Response: 1.

Hours of response: 202,251 hours.

*Total combined burden hours:* 202,251 hours.

*Status of the proposed information collection:* Reinstatement of previously

approved collection number will expire October 31, 2005.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 3, 2005.

**Pamela H. Patenaude,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 05-22266 Filed 11-7-05; 8:45 am]

**BILLING CODE 4210-29-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Proposed Campo Solid Waste Landfill Facility on the Campo Indian Reservation, San Diego County, CA

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Campo Band of Kumeyaay Indians (Campo Band) as a cooperating agency, intends to prepare a Supplemental Environmental Impact Statement (SEIS) for a proposed solid waste landfill facility to be located on the Campo Indian Reservation in San Diego County, California. The purpose of the proposed action is to provide economic support for tribal self-sufficiency and self-government and to address the socio-economic needs of the Campo Band.

**DATES:** Written comments on this notice must arrive by December 9, 2005.

**ADDRESSES:** You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address and the caption, "SEIS, Campo Solid Waste Landfill Facility Proposal," on the first page of your written comments.

**FOR FURTHER INFORMATION CONTACT:** John Rydzik, (916) 978-6042.

**SUPPLEMENTARY INFORMATION:** The proposed action is to approve a lease and sublease to allow a 1,150 acre portion of the Campo Indian Reservation to be used for the construction and operation of a solid waste landfill facility. The solid waste landfill facility would require approximately 600 acres of the 1,150 acre lease area. The remaining 550 acres of lease area that surround the proposed facility would be preserved as an

undeveloped buffer area. The Campo Indian Reservation, which consists of 15,580 acres in southeastern San Diego County, lies just north of the United States/Mexico border and approximately 45 miles inland from the Pacific Ocean.

The Campo Band previously entered into a lease agreement with Muht-Hei, Inc. (MHI), pursuant to which MHI would lease a portion of the Campo Indian Reservation for the purpose of constructing and operating a solid waste landfill, recycling facility, and composting facility. The Campo Band originally authorized MHI in 1989 to enter into a sublease with Mid-American Waste Systems, Inc. (MAWS) for the development of the solid waste landfill facility. The Campo Band requested the BIA approve the lease and sublease for the proposed project. An Environmental Impact Statement (EIS) was prepared by BIA, in accordance with the requirements of the National Environmental Policy Act, to evaluate the environmental impacts of the proposed project prior to determining whether the proposed lease related to the project should be approved. A Final EIS (FEIS) was released on November 24, 1992. The BIA issued a Record of Decision (ROD) with conditions on April 27, 1993, and approved the lease between the Campo Band and MHI and sublease between MHI and MAWS for the proposed solid waste landfill. The Campo Environmental Protection Agency (CEPA) issued a final Authority to Construct Permit (ATC) to MHI and MAWS on April 5, 1994, to construct the proposed solid waste landfill, subject to the conditions of the ROD and ATC.

Subsequently, MAWS failed to proceed with construction of the project and MHI was found in default of the sublease terms. Since that time, MHI has solicited interest from other solid waste landfill developers. In early 2003, MHI began negotiations with BLT Enterprises, Inc. (BLT), Oxnard, California, on the terms of a sublease to develop the solid waste landfill described in the FEIS. Those negotiations were successfully concluded and on December 12, 2004, the Campo Band authorized MHI to enter into a sublease with BLT.

The BIA has decided to prepare a SEIS to address changes in the proposed action, relevant information that has become available, or circumstances that have changed over the years since the FEIS was issued. Areas of concern addressed in the FEIS included land resources, water resources, air quality, living resources, cultural resources, socio-economics, transportation, land

use, resource use patterns, noise and other values. The FEIS included five alternatives to the proposed action, as follows: (1) Alternative Site One, (2) Alternative Site Two, (3) Reduced Waste Stream at the Proposed Site, (4) Reduced Area of Disturbance at the Proposed Site, and (5) No Action. The SEIS will incorporate the proposed project description from the FEIS by reference, and will discuss aspects of the project that have changed since the FEIS was released in 1992, any changes in environmental impacts associated with those changes, and changes to alternatives.

#### Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

#### Authority

This notice is published in accordance with sections 1503.1, 1506.6 and 1508.22 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: October 24, 2005.

**Michael D. Olsen,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 05–22173 Filed 11–7–05; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID–300–1020–PH]

#### Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held November 29–30, 2005 at the Hampton Inn, 2500 Channing Way, Idaho Falls, Idaho 83404. The meeting will start at 1 p.m. November 29, with an orientation session for new members. This first day will be information only, and no decisions will be made. The second day, November 30, will be for the full Advisory Council, and the public comment period as the first agenda item, starting at 8 a.m. The meeting will adjourn at or before 3 p.m. At this meeting, the Advisory Council will set its agenda for the coming year, schedule meetings, and discuss current issues before the BLM Idaho Falls District.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho. At this meeting, topics we plan to discuss include:

- Orientation for new members.
- A discussion of recreational upgrades to the Blackfoot Reservoir campground and the need to set fees. RAC members will be asked for their input as to an appropriate range of fees for the site, in preparation for a broader public outreach campaign in December and January.
- Updates on Idaho's Sage Grouse Conservation strategy, if completed and released for public review.
- A field trip to the Cress Creek Trail, *weather permitting*. If remaining indoors, the discussion will also include a brief update on the Upper Snake Field Office South Fork Activity Plan revision.
- Updates on the latest litigation for BLM, and other current issues as appropriate.

- The RAC will set an annual agenda.
- Other items of interest raised by the Council.

Transportation for the field trip will be provided for RAC members. Members of the public wishing to accompany the RAC on the field trip must furnish their own transportation.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

**FOR FURTHER INFORMATION CONTACT:** David Howell, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524-7559. E-mail: [David\\_Howell@blm.gov](mailto:David_Howell@blm.gov).

Dated: November 2, 2005.

**David Howell,**

*RAC Coordinator, Public Affairs Specialist.*  
[FR Doc. 05-22206 Filed 11-7-05; 8:45 am]

**BILLING CODE 4310-GG-P**

## INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-298 and 299 (Second Review); Investigations Nos. 701-TA-267 and 268 and 731-TA-304 and 305 (Second Review)]

### Porcelain-on-Steel Cooking Ware From China and Taiwan; Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines that revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware

from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time,<sup>2</sup> and that revocation of the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission instituted these reviews on March 1, 2005 (70 FR 9974) and determined on June 6, 2005 that it would conduct expedited reviews (70 FR 35708, June 21, 2005).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 27, 2005. The views of the Commission are contained in USITC Publication 3808 (October 2005), entitled *Porcelain-on-Steel Cooking Ware From China and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan* (Investigation Nos. 731-TA-298 and 299 (Second Review) and Investigation Nos. 701-TA-267 and 268 and 731-TA-304 and 305 (Second Review)).

By order of the Commission.

Issued: November 1, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-22158 Filed 11-7-05; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**Editorial Note:** This document was inadvertently omitted from the issue of Thursday, November 3, 2005.

**ACTION:** 30-Day Notice of Information Collection Under Review: Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); Affidavit for Chain Renewal (DEA Form 225b).

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 70, Number 154, page 46887 on August 11, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 8, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for registration (DEA Form 225); Application for registration renewal (DEA Form 225a); Affidavit for chain renewal (DEA Form 225b).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Vice Chairman Deanna Tanner Okun, Commissioner Charlotte R. Lane, and Commissioner Daniel R. Pearson dissenting.

Form Number: DEA Form 225, 225a, and 225B; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Controlled Substances Act requires all persons who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 1,318 persons complete DEA Form 225 on paper, at 30 minutes per form, for an annual burden of 659 hours. It is estimated that 284 persons complete DEA Form 225 electronically, at 10 minutes per form, for an annual burden of 47 hours. It is estimated that 5,338 persons complete DEA Form 225a on paper, at 30 minutes per form, for an annual burden of 2,669 hours. It is estimated that 4 persons complete DEA Form 225B on paper, at one hour per form, for an annual burden of 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 3,379 annual burden hours.

If additional information is required contact; Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 27, 2005.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

**Editorial Note:** This document was inadvertently omitted from the issue of Thursday, November 3, 2005.

[FR Doc. R5-21900 Filed 11-7-05; 8:45 am]

**BILLING CODE 1505-01-D-M**

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 6-05]

#### Sunshine Act; Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government

in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

**DATE AND TIME:** Thursday, November 17, 2005, at 10 a.m.

**SUBJECT MATTER:** Issuance of Proposed Decisions in claims against Albania.

**STATUS:** Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616-6988.

**Mauricio J. Tamargo,**  
*Chairman.*

[FR Doc. 05-22303 Filed 11-3-05; 5:09 pm]

**BILLING CODE 4410-01-P**

## COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1421]

### Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

**AGENCY:** Coordinating Council on Juvenile Justice and Delinquency Prevention.

**ACTION:** Notice of meeting.

**SUMMARY:** The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing the December 2, 2005, meeting of the Council.

**DATES:** Friday, December 2, 2005, 9:15 a.m.-12:30 p.m.

**ADDRESSES:** The meeting will take place at the Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525 in the eighth floor conference room.

**FOR FURTHER INFORMATION CONTACT:** Robin Delany-Shabazz, Designated Federal Official, by telephone at 202-307-9963, or by e-mail at [robin.delany-shabazz@usdoj.gov](mailto:robin.delany-shabazz@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601,

*et seq.* Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at <http://www.JuvenileCouncil.gov>. (You may also verify the status of the meeting at that Web address.)

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary for Homeland Security, Immigrations and Customs Enforcement. Nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

#### Meeting Agenda

The agenda for this meeting will include: (a) A review of the past meeting and written public comments; (b) remarks from David Eisner, Chief Executive Officer of the Corporation for National and Community Service and other CNCS staff; (c) status of Council activities including joint projects and the January 2006 National Conference, "Building on Success: Providing Today's Youth With Opportunities for a Better Tomorrow"; (d) a demonstration of the Helping America's Youth state and local strategic planning tool; and (e) other business and announcements.

For security purposes, members of the public who wish to attend the meeting must pre-register by calling the Juvenile Justice Resource Center at 301-519-6473 (Daryel Dunston), no later than Monday, November 28, 2005. [Note: these are not toll-free telephone numbers.] Additional identification documents may be required. To register online, please go to <http://www.JuvenileCouncil.gov/meetings.html>. Space is limited.

**Note:** Photo identification will be required for admission to the meeting.

#### Written Comments

Interested parties may submit written comments by Monday, November 28, 2005, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at [Robin.Delany-Shabazz@usdoj.gov](mailto:Robin.Delany-Shabazz@usdoj.gov). The

Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. No oral comments will be permitted at this meeting.

Dated: October 31, 2005.

**J. Robert Flores,**

*Vice-Chair, Coordinating Council on Juvenile Justice and Delinquency Prevention.*

[FR Doc. 05-22188 Filed 11-7-05; 8:45 am]

**BILLING CODE 4410-18-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before December 8, 2005 to be assured of consideration.

**ADDRESSES:** Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-837-3213.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 23, 2005 (70 FR 49319 and 49320). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA;

(b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Use of NARA Official Seals.

*OMB number:* 3095-0052.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Business or other for-profit, Not-for-profit institutions, Federal government.

*Estimated number of respondents:* 10.

*Estimated time per response:* 20 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 3 hours.

*Abstract:* The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the National Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria.

Dated: October 27, 2005.

**L. Reynolds Cahoon,**

*Assistant Archivist for Information Services.*

[FR Doc. 05-22134 Filed 11-7-05; 8:45 am]

**BILLING CODE 7515-01-P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act; Agenda

**TIME AND DATE:** 9:30 a.m., Wednesday, November 16, 2005.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:**

7734 Highway Accident Report—Multiple Vehicle Collision on Interstate 95, Fairfield, Connecticut, January 17, 2003.

**NEWS MEDIA CONTACT:** Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Mr. Bill McGruder at (202) 314-6222 by Friday, November 11, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB Home page at <http://www.nts.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Vicky D'Onofrio, (202) 314-6410.

Dated: November 4, 2005.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. 05-22407 Filed 11-4-05; 3:45 pm]

**BILLING CODE 7533-01-M**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act; Agenda

**TIME AND DATE:** 9:30 a.m., Tuesday, November 15, 2005.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:**

5299S Most Wanted Safety Recommendations Program—November 2005 Update on Federal Issues.

**NEWS MEDIA CONTACT:** Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Mr. Bill McGruder at (202) 314-6222 by Friday, November 11, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB Home page at <http://www.nts.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Vicky D'Onofrio, (202) 314-6410.

Dated: November 4, 2005.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. 05-22408 Filed 11-4-05; 3:45 pm]

**BILLING CODE 7533-01-M**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-17]

**Portland General Electric Company, Trojan Nuclear Plant, Independent Spent Fuel Storage Installation; Notice Regarding Consideration of Approval of Proposed Corporate Restructuring**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice regarding consideration of approval of proposed corporate restructuring.

**FOR FURTHER INFORMATION CONTACT:**

Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-1179; fax number: (301) 415-8555; e-mail: [cmr1@nrc.gov](mailto:cmr1@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (the Commission or NRC) considered the issuance of an order under 10 CFR 72.50 for approval of the indirect transfer of Special Nuclear Materials (SNM) License No. SNM-2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI). The consent for indirect transfer was requested by letter dated July 12, 2005, by Portland General Electric Company (PGE) and Stephen Forbes Cooper, LLC. (SFC), as Disbursing Agent on behalf of the Reserve for Disputed Claims (Reserve), to facilitate implementation of the transfer of 100% of PGE's common stock held by the Enron Corporation (Enron) to the creditors of Enron. This is to be done by canceling the existing PGE common stock held by Enron and by authorizing and issuing to Enron's creditors new PGE common stock.

PGE is a wholly owned subsidiary of Enron. The circumstances of PGE's request for consent are that all current PGE stock will be cancelled and new PGE stock will be distributed to Enron's creditors as partial settlement of claims brought in Enron's bankruptcy proceeding. A Reserve will hold the new stock in escrow until it is distributed. Voting rights of the new stock will be exercised under direction of the Reserve Overseers, who will exercise their business judgment to maximize the value of the assets. The Reserve Overseers are bound by fiduciary duties in making decisions to vote the stock. The Reserve's role is to disburse the assets to creditors as rapidly as possible, and it will not seek control of PGE. The stock will be widely distributed and no individual will hold more than 5% of the outstanding stock as a result of the distribution. The Bankruptcy Court approved the creation of the Reserve and the distribution of the stock.

The effect of the stock distribution is that PGE will become a stand-alone, publicly traded Oregon corporation. There will be no substantive change in the control or operation of PGE. PGE's name will not change and the current management team will remain in charge of day-to-day operations. The Oregon

Public Utilities Commission will continue to exercise oversight of PGE. PGE will remain in control of and operate the Trojan ISFSI.

Under these circumstances, the staff determined that the stock distribution is not a transfer of control within the meaning of 10 CFR 72.50. Therefore, PGE does not require NRC approval for the distribution. The issuance of the new PGE common stock will not change the status of PGE as NRC licensee of the Trojan ISFSI. Control of the 10 CFR part 72 license for the Trojan ISFSI, now held by PGE and its co-owners, will remain with PGE and the same co-owners, and will not be affected by the issuance of the new PGE common stock. Issuance of the new PGE common stock will not affect PGE's technical and financial qualifications and its ability to continue funding its share of the costs of operating, maintaining, and ultimately decommissioning the Trojan ISFSI. No physical changes to the Trojan ISFSI or operational changes are being proposed in the application.

Notice of opportunity for hearing and petition for leave to intervene regarding this action was published in the **Federal Register** (70 FR 50427) on August 26, 2005. No requests for hearing or petitions for leave to intervene were received within the required 20 days from the date of publication of the notice and no written comments regarding the license transfer application, as provided for in 10 CFR 2.1305, were submitted or considered by the staff as part of the decisional record.

**Further Information**

For further details with respect to this action, see the application dated July 12, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1 (800) 397-4209, (301) 415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 31st day of October 2005.

For the Nuclear Regulatory Commission.

**Christopher M. Regan,**

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05-22198 Filed 11-7-05; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

**Sunshine Act; Meetings**

**DATE:** Weeks of November 7, 14, 21, 28, December 5, 12, 2005.

**PLACE:** Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of November 7, 2005*

There are no meetings scheduled for the Week of November 7, 2005.

*Week of November 14, 2005—Tentative*

There are no meetings scheduled for the Week of November 14, 2005.

*Week of November 21, 2005—Tentative*

Monday, November 21, 2005

9:30 a.m. Briefing on Status of New Reactor Issues, Part 1 (Public Meeting) (Contact: Laura Dudes, 301-415-0146)

1:30 p.m. Briefing on Status of New Reactor Issues, Part 2 (Public Meeting) (Contact: Laura Dudes, 301-415-0146)

These Meetings Will Be Webcast Live at the Web Address—<http://www.nrc.gov>.

*Week of November 28, 2005—Tentative*

Tuesday, November 29, 2005

9:30 a.m. Discussion of Management Issues (Closed—Ex. 2)

Wednesday, November 30, 2005

9:30 a.m. Briefing on EEO Program (Public Meeting) (Contact: Corenthis Kelley, 301-415-7380)

This Meeting Will Be Webcast Live at the Web Address—<http://www.nrc.gov>.

*Week of December 5, 2005—Tentative*

Thursday, December 8, 2005

1 p.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Contact: John Larkins, 301-415-7360)

These Meetings Will Be Webcast Live at the Web Address—<http://www.nrc.gov>.

*Week of December 12, 2005—Tentative*

Monday, December 12, 2005

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Wednesday, December 14, 2005

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Thursday, December 15, 2005

1:30 p.m. Briefing on Threat

Environment Assessment (Closed—  
Ex. 1)

\* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

\* \* \* \* \*

The NRC Commission Meeting Schedule Can Be Found on the Internet At: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301-415-7080, TDD: 301-415-2100, or by e-mail at [aks@nrc.gov](mailto:aks@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: November 3, 2005.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 05-22316 Filed 11-4-05; 11:02 am]

BILLING CODE 7590-01-M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the

authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 14, 2005 to October 27, 2005. The last biweekly notice was published on October 25, 2005 (70 FR 61655).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment

period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final

determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North,

Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to *pdr@nrc.gov*.

*Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake and Chatham Counties, North Carolina*

*Date of amendment request:* August 18, 2005.

*Description of amendment request:* The amendment will allow the use of fire-resistive electrical cable, which has been demonstrated to provide an equivalent level of protection as would be provided by 3-hour and 1-hour rated electrical cable raceway fire barriers, for the protection of safe shutdown electrical cable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Operation of HNP in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. The Final Safety Analysis Report (FSAR) documents the analyses of design basis accidents (DBA) at HNP. Any scenario or previously analyzed accidents that result in offsite dose were evaluated as part of this analysis. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of structures, systems, or components (SSCs) to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to assure that redundant trains of safe shutdown (SSD) control circuits remain protected from damage in the event of a postulated fire. The proposed amendment revises the Final Safety Analysis Report (FSAR) to use three-hour fire-resistive electrical cable, which has been demonstrated to provide an equivalent level of protection as would be provided by three-hour and one-hour rated electrical cable raceway fire barriers, for the protection of

SSD electrical cables. Based on the above, SSD control circuit protection is maintained by this amendment.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Operation of HNP in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The FSAR documents the analyses of design basis accidents (DBA) at HNP. Any scenario or previously analyzed accidents that result in offsite dose were evaluated as part of this analysis. The proposed amendment does not change or affect any accident previously evaluated in the FSAR, and no new or different scenarios are created by the proposed amendment. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to assure that redundant trains of Safe Shutdown (SSD) control circuits remain protected from damage in the event of a postulated fire. The proposed amendment revises the Final Safety Analysis Report (FSAR) to use three-hour fire-resistive electrical cable, which has been demonstrated to provide an equivalent level of protection as would be provided by three-hour and one-hour rated electrical cable raceway fire barriers, for the protection of SSD electrical cables. Based on the above, SSD control circuit protection is maintained by this amendment.

Therefore, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Operation of HNP in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the FSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to assure that redundant trains of Safe

Shutdown (SSD) control circuits remain protected from damage in the event of a postulated fire. The proposed amendment revises the Final Safety Analysis Report (FSAR) to use three-hour fire-resistive electrical cable, which has been demonstrated to provide an equivalent level of protection as would be provided by three-hour and one-hour rated electrical cable raceway fire barriers, for the protection of SSD electrical cables. Based on the above, SSD control circuit protection is maintained by this amendment.

Therefore, this amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David T.

Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Michael L. Marshall, Jr.

*Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of amendment request:* September 1, 2005.

*Description of amendment request:*

The amendment will add Technical Specification (TS) 3.7.14, "Fuel Storage Pool Boron Concentration" and revise TS 5.6, "Fuel Storage." The proposed changes are related to requirements for ensuring adequate subcriticality margin in the spent fuel storage pools. TS 5.6.1 is being revised to include the design requirements for dry storage of new fuel.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes do not modify the facility. The accident previously analyzed for the spent fuel pool is a fuel handling accident. The proposed change applies administrative controls for maintaining the required boron concentration in the spent fuel storage pools, revises acceptance criteria and storage arrangements for fuel storage in PWR [pressurized-water reactor] "flux trap" style racks and adds acceptance criteria for dry storage of new fuel to the Technical

Specifications. The controls on spent fuel pool boron and dry storage of new fuel have previously been implemented but are being added to the Technical Specifications as requirements. The proposed change applies new acceptance criteria for criticality safety of fuel storage in PWR "flux trap" style racks in Pools "A" and "B." The new acceptance criteria require new administrative controls on the placement of fuel in Pools "A" and "B." Similar administrative controls have previously been placed on fuel stored in Pools C and D. These changes will eliminate the dependence on Boraflex in the PWR "flux trap" style storage racks. These changes do not impact the probability of having a fuel handling accident and do not impact the consequences of a fuel handling accident.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No change is being made to the acceptance criteria of the dry storage of new fuel. These criteria are being added to Technical Specification Section 5.6.1. Detailed analyses have been performed to ensure a criticality accident in Pools "A" and "B" is not a credible event. The events that could lead to a criticality accident are not new. These events include a fuel mis-positioning event, a fuel drop event, and a boron dilution event. The proposed changes do not impact the probability of any of these events. The detailed criticality analyses performed demonstrate that criticality would not occur following any of these events. For the more likely event, such as a fuel mis-positioning event, the acceptance criteria for  $k_{eff}$  remains less than or equal to 0.95. For the unlikely event that the spent fuel storage pool boron concentration was reduced to zero,  $k_{eff}$  remains less than 1.0.

Therefore, a criticality accident remains "not credible," and this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Incorporation of acceptance criteria for dry storage of new fuel into TS 5.6.1 does not involve a reduction in the margin of safety. The new fuel storage condition continues to meet  $k_{eff} \leq 0.95$  during normal conditions and  $k_{eff} \leq 0.98$  under optimal moderation conditions.

The proposed changes for storage of new and irradiated fuel in Pools "A" and "B" continue to provide the controls necessary to ensure a criticality event could not occur in the spent fuel storage pool. The acceptance criteria are consistent with the acceptance criteria specified in 10 CFR 50.68, which provide an acceptable margin of safety with regard to the potential for a criticality event.

Therefore, this amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.  
*NRC Section Chief:* Michael L. Marshall, Jr.

*Entergy Nuclear Operations, Inc., Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of amendment request:* September 26, 2005.

*Description of amendment request:* The proposed amendment will revise the analysis method used for the large-break loss-of-coolant accident (LBLOCA) by incorporating the use of a new approach (ASTRUM) for the treatment of parameter uncertainties. The new approach is described in Westinghouse Topical Report WCAP-16009-P-A, approved by the NRC on November 5, 2004.

Changes to the Technical Specifications to reflect the proposed use of ASTRUM in LBLOCA analysis consist of revisions to the list of references provided in Technical Specification Section 5.6.5, Core Operating Limits Report.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change modifies the analysis methodology used to account for the variation in parameters that are used for the safety analysis of the LBLOCA. This proposed change has no effect on the design or operation of plant equipment. Use of the new methodology will revise the results of the current analysis, but there will be no change in initiating events for this accident scenario or the ability of the plant equipment or plant operators to respond.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve modifications to existing plant equipment or the installation of any new equipment. The proposed change only affects the analysis methodology that is used to evaluate the response of existing plant equipment to the LBLOCA scenario. Plant operating and emergency procedures that are in place for the LBLOCA scenario are also not being changed by this proposed amendment. This proposed change does not create new failure modes or malfunctions of plant equipment nor is there a new credible failure mechanism.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed license amendment revises the analysis methodology which is used to assess the impact of the LBLOCA scenario with respect to established acceptance criteria. Margins of safety for LBLOCA include quantitative limits for fuel performance established in 10 CFR 50.46. These acceptance criteria and the associated margins of safety are not being changed. The evaluation of the LBLOCA scenario, using the proposed new methodology must still meet the existing established acceptance criteria.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Section Chief:* Richard J. Laufer.

*Exelon Generation Company, LLC, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of amendment request:* April 4, 2005.

*Description of amendment request:* The proposed amendments would revise the maximum and minimum allowable values for the degraded voltage function of the 4160 volt essential service system (ESS) bus under-voltage instrumentation.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes revise the Technical Specifications (TS) maximum and minimum allowable values for the degraded voltage protection function and implement the use of automatic load tap changers (LTCs) on transformers that provide power to safety-related equipment. The only accident previously evaluated for which the probability is potentially affected by these changes is the loss of offsite power (LOOP). An allowable value for the degraded voltage protection function that is too high could cause the emergency buses to transfer to the emergency diesel generators (EDG) and thus increase the probability of a LOOP. The allowable value for the degraded voltage protection function has been revised in accordance with an NRC-approved setpoint methodology and will continue to ensure that the degraded voltage protection function actuates when required, but does not actuate prematurely to cause a LOOP.

A failure of an LTC while in automatic operation mode that results in decreased voltage to the ESS buses could also cause a LOOP. This could occur in two ways. A failure of the LTC controller that results in rapidly decreasing the voltage to the emergency buses is the most severe failure mode. However, a backup controller is provided with the LTC that makes this failure highly unlikely. A failure of the LTC controller to respond to decreasing grid voltage is less severe, since grid voltage changes occur slowly. In both of the above potential failure modes, operators will take manual control of the LTC to mitigate the effects of the failure. Thus, the probability of a LOOP is not significantly increased.

The proposed changes will have no effect on the consequences of a LOOP, since the EDGs provide power to safety related equipment following a LOOP. The EDGs are not affected by the proposed changes.

The probability of other accidents previously evaluated is not affected, since the proposed changes do not affect the way plant equipment is operated and thus do not contribute to the initiation of any of the previously evaluated accidents. The only way in which the consequences of other previously evaluated accidents could be affected is if a failure of the LTC while in automatic operation mode caused a sustained high voltage which resulted in damage to safety related equipment that is used to mitigate an accident. Damage due to over-voltage is time-dependent. Since the LTC is equipped with a backup controller, and since operator action is available to prevent a sustained high voltage condition from occurring, damage to safety related equipment is extremely unlikely, and thus the consequences of these accidents are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

*Response:* No.

The proposed changes involve functions that provide offsite power to safety related equipment for accident mitigation. Thus, the proposed changes potentially affect the consequences of previously evaluated accidents (as addressed in Question 1), but do not result in any new mechanisms that could initiate damage to the reactor and its principal safety barriers (i.e., fuel cladding, reactor coolant system, or primary containment).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not affect the inputs or assumptions of any of the analyses that demonstrate the integrity of the fuel cladding, reactor coolant system, or containment during accident conditions. The allowable values for the degraded voltage protection function have been revised in accordance with an NRC-approved setpoint methodology and will continue to ensure that the degraded voltage protection function actuates when required, but does not actuate prematurely to cause a LOOP. Automatic operation of the LTC increases margin by reducing the potential for transferring to the EDGs during an event.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.  
*NRC Section Chief:* Gene Y. Suh.

*FPL Energy Seabrook, LLC, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:*  
September 22, 2005.

*Description of amendment request:*  
The proposed amendment would revise the Seabrook Station, Unit No. 1 operating license and Technical Specifications to increase the licensed rated power level by 1.7 percent from 3587 megawatts thermal (MWt) to 3648 MWt. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Seabrook Station performed evaluations of the Nuclear Steam Supply System (NSSS) and balance of plant systems, components, and analyses that could be affected by the proposed change. A power uncertainty calculation was performed, and the effect of increase core thermal power by 1.7 percent to 3648 MWt on the Seabrook Station design and licensing basis was evaluated. The result of the evaluations determined that all systems and components continue to be capable of performing their design function at the MUR [measurement uncertainty recapture] core power level of 3648 MWt. An evaluation of the accident analyses demonstrates that the applicable analyses acceptance criteria continue to be met. No accident initiators are affected by the MUR power uprate and no challenges to any plant safety barriers are created by the proposed change.

The proposed change does not affect the release paths, the frequency of release, or the analyzed source term for any accidents previously evaluated in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). Systems, structures, and components required to mitigate transients continue to be capable of performing their design functions, and thus were found acceptable. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at the MUR core power level of 3648 MWt. Analyses performed to assess the effects of mass and energy remain valid. The source term used to assess radiological consequences [has] been reviewed and determined to bound operation at the MUR core power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. The installation of the Caldon LEM CheckPlus™ System has been analyzed, and failures of the system will have no adverse effect on any safety-related system or any systems, structures, and components required for transient mitigation. Systems, structures, and components previously required for the mitigation of a transient continue to be capable of fulfilling their intended design functions. The proposed change has no adverse affect on any safety-related system or component and does not change the performance or integrity of any safety-related system.

The proposed change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at a

core power level of 3648 MWt does not create any new accident initiators or precursors. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at the MUR core power level of 3648 MWt. Credible malfunctions continue to be bounded by the current accident analyses of record or evaluations that demonstrate that applicable criteria continue to be met.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in a margin [of] safety.

The margins of safety associated with the MUR are those pertaining to core thermal power. These include those associated with the fuel cladding, Reactor Coolant System pressure boundary, and containment barriers. An engineering evaluation of the 1.7 percent increase in core thermal power from 3587 MWt to 3648 MWt was performed. The current licensing bases analyzed core power is 3659 MWt. The analyzed core power level of 3659 MWt bounds the NSSS thermal and hydraulic parameters at the MUR core power level of 3648 MWt. The NSSS systems and components were evaluated at the MUR core power level and it was determined that the NSSS systems and components continue to operate satisfactorily at the MUR power level. The NSSS accident analyses were evaluated at the MUR core power level of 3648 MWt. In all cases, the accident analyses at the MUR core power level of 3648 MWt were bounded by the current licensing bases analyzed core power level of 3659 MWt. As such, the margins of safety continue to be bounded by the current analyses of record for this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408-0420.  
*NRC Section Chief:* Darrell J. Roberts.

*FPL Energy Seabrook, LLC, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:*  
September 29, 2005.

*Description of amendment request:*  
The proposed amendment would revise the Seabrook Station, Unit No. 1, Technical Specifications (TSs) to permit a one-time, six-month extension to the currently approved 15-year test interval for the containment integrated leak rate test.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change [does] not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability or consequences of accidents previously evaluated in the UFSAR [updated final safety analysis report] are unaffected by this proposed change. There is no change to any equipment response or accident mitigation scenario, and this change results in no additional challenges to fission product barrier integrity. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. As a result, the outcomes of previously evaluated accidents are unaffected. The proposed extension to the containment integrated leak rate test (ILRT) interval does not involve a significant increase in consequences because, as discussed in NUREG 1493, Performance Based Containment Leak Rate Test Program, Type B and C tests identify the vast majority (greater than 95 percent) of all potential leakage paths. Further, ILRTs identify only a few potential leakage paths that cannot be identified through Type B and C testing, and leaks found by Type A testing have been only marginally greater than existing requirements. In addition, periodic inspections ensure that any significant containment degradation will not go undetected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change [does] not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The proposed change neither installs or removes any plant equipment, nor alters the design, physical configuration, or mode of operation of any plant structure, system, or component. No physical changes are being made to the plant, so no new accident causal mechanisms are being introduced. The proposed change only changes the frequency of performing the ILRT; however, the test implementation and acceptance criteria are unchanged. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change [does] not involve a significant reduction in a margin of safety.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the availability, operability, or performance of the safety-related systems and components. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. The ability of any operable

structure, system, or component to perform its designated safety function is unaffected by this change. NUREG 1493 concluded that reducing the frequency of ILRTs to 20 years resulted in an imperceptible increase in risk. Also, inspections of containment, required by the ASME code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] and the maintenance rule, ensure that containment will not degrade in a manner that is only detectable by Type A (ILRT) testing. Therefore, the margin of safety as defined in the TS is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408-0420.

*NRC Section Chief:* Darrell J. Roberts.

*FPL Energy Seabrook, LLC, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:*  
September 29, 2005.

*Description of amendment request:*  
The proposed amendment would revise the Seabrook Station, Unit No. 1 Technical Specifications to permit a change in the steam generator tube inspection requirements to include a sampling of the bulges and over-expansions for portions of the steam generator tubes within the hot leg tubesheet region.

*Basis for proposed no significant hazards consideration determination:*  
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed changes that alter the steam generator inspection criteria do not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed changes will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed changes to the steam generator tube inspection criteria, are the steam generator tube rupture (SGTR)

event and the steam line break (SLB) accident.

During the SGTR event, the required structural integrity margins of the steam generator tubes will be maintained by the presence of the steam generator tubesheet area. Tube rupture in tubes with cracks in the tubesheet is precluded by the constraint provided by the tubesheet. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR [pressurized-water reactor] Steam Generator Tubes," are maintained for both normal and postulated accident conditions.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated ruptured tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically-expanded outside diameter.

Furthermore, the proposed changes do not affect other systems, structures, components or operational features. Therefore, the proposed changes result in no significant increase in the probability of the occurrence of a SGTR accident.

The probability of a[n] SLB accident is unaffected by the potential failure of a steam generator tube as this failure is not an initiator for a[n] SLB accident.

The consequences of a[n] SLB accident are also not significantly affected by the proposed changes. During a[n] SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., a[n] SLB) is limited by flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications. The primary-to-secondary leak rate during postulated SLB accident conditions would be expected to be less than that during normal operation for indications near the bottom of the tubesheet (i.e., including indications in the tube end welds). This conclusion is based on the

observation that while the driving pressure causing leakage increases by approximately a factor of (two) 2, the flow resistance associated with an increase in tube-to-tubesheet contact pressure, during a[n] SLB accident, increases by approximately a factor of 2.5. While such a leakage decrease is logically expected, the postulated accident leak rate could be conservatively bounded by twice the normal operating leak rate even if the increase in contact pressure is ignored. Since normal operating leakage (spiking) is limited to less than 0.104 gpm (150 gpd) for continued power operation per station operating procedure OS 1227.02, "Steam Generator Tube Leak," the associated accident condition leak rate, assuming all leakage to be from lower tube sheet indications, would be bound by 0.208 gpm (twice normal operating leak rate). This value is well within the assumed accident leakage rate of 0.347 gpm discussed in the Seabrook Station Updated Safety Analysis Report, Section 15.1.5 "Steam System Piping Failure." Hence it is reasonable to omit any consideration of inspection of the tube, tube end weld, bulges / overexpansions or other anomalies below 17 inches from the top of the hot leg tubesheet. Therefore, the consequences of a[n] SLB accident remain unaffected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

The proposed changes do not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes maintain the required structural margins of the steam generator tubes for both normal and accident conditions. Nuclear Energy Institute (NEI) 97-06, "Steam Generator Program Guidelines," and NRC Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," are used as the bases in the development of the limited hot leg tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are

reduced. RG 1.121 uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse evaluation LTR-CDME-05-170, "Limited Inspection of the Steam Generator Tube Portion Within the Tubesheet at Seabrook Generating Station," defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited hot leg tubesheet inspection depth criteria.

Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408-0420.  
*NRC Section Chief:* Darrell J. Roberts.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Date of amendment request:*  
September 27, 2005.

*Description of amendment request:*  
The amendments proposed by Southern Nuclear Operating Company would revise the Technical Specifications (TS) to eliminate the Power Range Neutron Flux-High Negative Rate Reactor Trip function, based on the approved methodology contained in Westinghouse Topical Report WCAP-11394-P-A, "Methodology for the Analysis of the Dropped Rod Event." The changes will allow the elimination of a trip circuitry that is not credited in the Farley Nuclear Plant safety analysis, and which can result in an unnecessary reactor trip. These changes will be implemented sequentially, concurrent with each unit's refueling outage during which the design change is implemented. Additionally, this amendment request deletes TS Bases text associated with an unconservative local Departure from Nucleate Boiling Ratio.

*Basis for proposed no significant hazards consideration determination:*  
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). All of the safety analyses have been evaluated for impact due to this change. The elimination of the Power Range Neutron Flux-High Negative Rate Reactor Trip function and the elimination of text in the TS [Technical Specifications] Bases for LC0 3.3.1, page B 3.3.1-1 1, associated with an unconservative local DNBR [departure from nucleate boiling ratio], does not affect the dropped RCCA [Rod Cluster Control Assembly] analyses nor any other analyses, since it is not credited in any of the safety analyses; therefore, the probability of an accident has not been increased. All dose consequences have been evaluated with respect to the proposed changes, there is no impact due to the proposed change, and all acceptance criteria continue to be met. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes do not create the possibility of a new or different kind of accident from any accident already evaluated in the UFSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as result of the proposed changes. The changes have no adverse effects on any safety-related system. Therefore, all accident analyses criteria continue to be met and these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

No. The proposed changes do not involve a significant reduction in a margin of safety. The dropped RCCA(s) event does not credit the Power Range Neutron Flux-High Negative Rate Reactor Trip function. The conclusion presented in the UFSAR Section 15.2.3.3 that the DNBR design basis is met for a dropped RCCA(s) event remains valid for the proposed changes, which are based on the NRC approved methodology contained in CAP-11394-PA. Additionally, WCAP-11394-P-A indicates that the analysis for a dropped rod event envelops a multiple rod drop accident at high power levels, and that such an accident will not result in an unconservative local DNBR. All applicable acceptance criteria continue to be met. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

*NRC Section Chief:* Evangelos C. Marinos.

**Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama**

*Date of amendment request:* October 6, 2005.

*Description of amendment request:* The amendments proposed by Southern Nuclear Operating Company (SNC) would revise the Technical Specifications (TS) to support a revision to the Best Estimate Loss of Coolant Accident (BELOCA) for Farley Nuclear Plant (FNP). The NRC recently approved a new Westinghouse BELOCA methodology, Automated Statistical Treatment of Uncertainty Method (ASTRUM). ASTRUM was submitted in WCAP-16009-P. The NRC issued a Safety Evaluation Report in a letter dated November 5, 2004. Westinghouse issued WCAP-16009-P-A in January 2005. SNC has completed the analysis for FNP and the enclosed proposed amendment is to incorporate a reference to WCAP-16009-P-A in TS section 5.6.5 Core Operating Limits Report (COLR).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No physical plant changes are being made as a result of using the Westinghouse Best Estimate Large Break LOCA [Loss of Coolant Accident] (BELOCA) analysis methodology. The proposed TS changes simply involve updating the references in TS 5.6.5.b, Core Operating Limits Report (COLR), to reference the Westinghouse BELOCA analysis methodology. The plant conditions assumed in the analysis are bounded by the design conditions for all equipment in the plant; therefore, there will be no increase in the probability of a LOCA. The consequences of a LOCA are not being increased, since the analysis has shown that the Emergency Core Cooling System (ECCS) is designed such that

its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors." No other accident consequence is potentially affected by this change.

All systems will continue to be operated in accordance with current design requirements under the new analysis, therefore no new components or system interactions have been identified that could lead to an increase in the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). No changes were required to the Reactor Protection System (RPS) or Engineering Safety Features (ESF) setpoints because of the new analysis methodology.

Therefore, it is concluded that this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

There are no physical changes being made to the plant as a result of using the Westinghouse Best Estimate Large Break LOCA analysis methodology. No new modes of plant operation are being introduced. The configuration, operation and accident response of the structures or components are unchanged by utilization of the new analysis methodology. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario. The parameters assumed in the analysis are within the design limits of existing plant equipment.

In addition, employing the Westinghouse Best Estimate Large Break LOCA analysis methodology does not create any new failure modes that could lead to a different kind of accident. The design of all systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to any RPS or ESF actuation setpoints.

Based on this review, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

It has been shown that the analytic technique used in the Westinghouse Best Estimate Large Break LOCA analysis methodology realistically describes the expected behavior of the reactor system during a postulated LOCA. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of LOCAs with different break sizes, different locations, and other variations in properties have been considered to provide assurance that the most severe postulated LOCAs have been evaluated. The analysis has demonstrated that all acceptance criteria contained in 10

CFR 50.46 paragraph b continue to be satisfied.

Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

*NRC Section Chief:* Evangelos C. Marino.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of amendment request:* January 27, 2005.

*Description of amendment request:* The proposed amendments would revise Technical Specifications Limiting Conditions for Operations 3.3.1, 3.3.2, 3.3.6, and 3.3.8, by extending the Surveillance Test Intervals for the Reactor Protection System.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed changes to the Completion Time, bypass test time, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious actuations and, therefore, do not increase the probability of any accident previously evaluated. The proposed changes to the allowed Completion Time, bypass test time, and Surveillance Frequencies do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the reactor trip system and engineered safety feature actuation system (RTS and ESFAS) signals. The RTS and ESFAS will remain highly reliable, and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by core damage frequency (CDF) is less than 1.01E-06 per year and the impact on large early release frequency (LERF) is less than 1.0E-07 per year. In addition, for the Completion Time change, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E-08. These changes meet the

acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by CDF, LERF, ICCDP, and ICLERP is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents. The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences. Therefore, it is concluded that this change does not increase the probability of occurrence of a malfunction of equipment important to safety.

**2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated?**

The proposed changes do not result in a change in the manner in which the RTS and ESFAS provide plant protection. The RTS and ESFAS will continue to have the same setpoints after the proposed changes are implemented. There are no design changes associated with the license amendment. The changes to Completion Time, bypass test time, and Surveillance Frequency do not change any existing accident scenarios, nor create any new or different accident scenarios. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the possibility of a new or different malfunction of safety related equipment is not created.

**3. Does the Proposed Change Involve a Significant Reduction in the Margin of Safety?**

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and

engineered safety features actuation is also maintained. All signals credited as primary or secondary and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased Completion Time, bypass test time, and Surveillance Frequencies, it is expected there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing. Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Arthur H. Dombey, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2216.

*NRC Section Chief:* Evangelos C. Marinos.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee*

*Date of amendment request:* September 30, 2005 (TS-05-02).

*Description of amendment request:* The proposed amendment would revise the SQN Technical Specification (TS) Section 5.0, "Design Features," to more conform with NUREG-1431 Revision 3, "Standard Technical Specifications for Westinghouse Plants." The proposed change included the elimination of exclusion area, low population zone, and effluent subsections and associated figures referred to in Section 5.1, "Site"; elimination of Section 5.2, "Containment"; elimination of Section 5.4, "Reactor Coolant System," as well as Section 5.5, "Meteorological Tower Location," and its figure. Lastly, a proposed change to the TS "Administrative Control" section to acquire the component cyclic or transient limits currently located in the "Design Features" section.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The removal of information and figures featuring the locations of the site exclusion area, gaseous and liquid effluent boundaries, low population zone, and the meteorological tower is administrative in nature. Most, if not, all of this information is located in other licensee control documents, such as the Final Safety Analysis Report (FSAR). Congruently, the addition of a site location description only adds geographical information to the TSs. The relocation and revision of the component cyclic or transient limits requirement does not alter the requirement to track and maintain these limits and thus considered administrative. This proposed amendment involves no technical changes to the existing TSs and does not impact initiators of analyzed events. The changes also do not impact the assumed mitigation of accidents or transient events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve a change to plant systems, components, or operating practices that could result in a change in accident generation potential. The proposed changes do not impose any new or different requirements or eliminate any existing requirements. The proposed changes do not alter assumptions made in the safety analyses and licensing basis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The deletion of information and figures featuring the locations of the site exclusion area, gaseous and liquid effluent boundaries, low population zone, and the meteorological tower does not affect operational limits or functional capabilities of plant systems, structures and components. The addition of a site location description adds geographical information to the TSs. The relocation and revision of the component cyclic or transient limits requirements also does not affect operational limits or functional capabilities of plant systems, structures and components. These changes pose no effect on margin of safety. The TS identified maximum steel containment temperature value is not the current limiting design value, which is found in the FSAR. Its elimination is considered administrative in nature and does not result in a change of margin of safety to the containment design. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Section Chief:* Michael L. Marshall, Jr.

*TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit 2, Somervell County, Texas*

*Date of amendment request:* April 27, 2005, as supplemented by letter dated July 20, 2005.

*Brief description of amendments:* The amendment revises Technical Specification (TS) 5.6.5, "Core Operating Limits Report," by adding topical report WCAP-13060-P-A, "Westinghouse Fuel Assembly Reconstitution Evaluation Methodology," to the list of approved methodologies to be used at Comanche Peak Steam Electric Station (CPSES), Unit 2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change is administrative in nature and as such does not impact the condition or performance of any plant structure, system or component. The core operating limits are established to support Technical Specifications 3.1, 3.2, 3.3, 3.4, and 3.9. The core operating limits ensure that fuel design limits are not exceeded during any conditions of normal operation or in the event of any Anticipated Operational Occurrence (AOO). The methods used to determine the core operating limits for each operating cycle are based on methods previously found acceptable by the NRC and listed in TS section 5.6.5.b. Application of these approved methods will continue to ensure that acceptable operating limits are established to protect the fuel cladding integrity during normal operation and AOOs. The requested Technical Specification change does not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of operator error. The requested change does not affect any postulated accident precursors, does not affect any accident mitigation systems, and does not introduce any new accident initiation mechanisms.

As a result, the proposed change to the CPSES Technical Specifications does not involve any increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed administrative change.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change is administrative in nature, and therefore does not involve any change in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions, and no new failure modes are being introduced.

Therefore, the proposed administrative change to the CPSES Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change is administrative in nature and does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the proposed administrative change.

Therefore, the proposed change to the CPSES Technical Specifications does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* David Terao.

*TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* January 24, 2005.

*Brief description of amendments:* The amendments will revise the surveillance requirements (SRs) for Technical Specification 3.7.5, "Auxiliary Feed Water (AFW) System." Specifically, a note will be added to SRs 3.7.5.1, 3.7.5.3, and 3.7.5.4 that states, "AFW train(s) may be considered OPERABLE during alignment and operation for steam generator level control, if it is

capable of being manually realigned to the AFW mode of operation."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change has no impact on the probability of any accident previously evaluated. The consequences of the limiting transients and accidents (full power operation) are unaffected by the proposed change. At low power sufficient time is available to establish auxiliary feedwater injection if needed.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. There are no changes in the method by which any safety-related plant system performs its safety function. Overall protection system performance will remain within the bounds of the previously performed accident analyses and the protection systems will continue to function in a manner consistent with the plant design basis. The proposed changes do not affect the probability of any event initiators. The proposed changes do not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Final Safety Analysis Report (FSAR).

Therefore, the proposed change[s] do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, the Departure from Nucleate Boiling Ratio (DNBR) limits, the Heat Flux Hot Channel Factor (FQ), the Nuclear Enthalpy Rise Hot Channel Factor (F'H), the Loss of Coolant Accident Peak Centerline Temperature (LOCA PCT), peak local power density, or any other margin of safety. The

radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met. Since the limiting transients and accidents are unaffected, the proposed change[s] do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* David Terao.

*TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* August 10, 2005.

*Brief description of amendments:* The amendments would revise the Technical Specification (TS) 5.5.13, "Diesel Fuel Oil Testing Program," to relocate the specific American Society for Testing and Materials (ASTM) Standard reference from the Administrative Controls Section of TS to a licensee-controlled document.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes relocate the specific American Society for Testing and Materials (ASTM) Standard references from the Administrative Controls of TS to a licensee-controlled document. Since any change to the licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, "Changes, tests and experiments," no increase in the probability or consequences of an accident previously evaluated is involved.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident

previously evaluated. Further, the proposed changes do not increase individual or cumulative occupational or public radiation exposure.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or change in the methods governing normal plant operation. In addition, the changes do not alter the assumptions made in the analysis and licensing basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The level of safety of facility operation is unaffected by the proposed changes since there is no change in the intent of the TS requirements of assuring fuel oil is of the appropriate quality for emergency DG [diesel generator] use. The proposed changes provide the flexibility needed to utilize state-of-the-art technology in fuel oil sampling and analysis methods.

Therefore the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* David Terao.

*TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* August 22, 2005.

*Brief description of amendments:* The amendments revise Technical Specification (TS) 3.7.10, "Control Room Emergency Filtration/Pressurization System (CREFS) and Control Room Envelope (CRE)," and adds new TS 5.5.20, "Control Room Integrity Program," and TS 5.6.11, "Control Room Report." In addition the amendments update the Final Safety Analysis Report to include new methods and assumptions as described in Regulatory Guide 1.195 for evaluation of radiological consequences.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change addresses the Control Room Envelope (CRE), including updated surveillances for the Control Room Emergency Filtration/Pressurization System (CREFS) trains and the CRE, a new TS 5.5.20, "Control Room Integrity Program," and a new TS 5.6.11, "Control Room Report." These changes are consistent with the guidance in Regulatory Guides 1.196 and 1.197. New methods and assumptions for evaluating radiological consequences for design basis accidents are adopted consistent with NRC Regulatory Guide 1.195. The acceptance limits for the Control Room Integrity Program are based on these revised radiological dose consequences calculations. The proposed changes do not adversely affect accident initiators or precursors nor alter the configuration of the facility. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event to within the Regulatory Guide 1.195 acceptance limits. This activity is a revision to the Technical Specifications and the supporting radiological dose consequences analyses for the control room ventilation system which is a mitigating system designed to minimize in-leakage into the control room and to filter the control room atmosphere to protect the control room operators following accidents previously analyzed. An important part of the system is the control room envelope (CRE). The CRE integrity is not an initiator or precursor to any accident previously evaluated. Therefore the probability of occurrence of any accident previously evaluated is not increased. Performing tests and implementing programs that verify the integrity of the CRE and control room habitability ensure mitigation features are capable of performing the assumed function.

The revised radiological consequences analyses, performed using the assumptions and methodologies presented in Regulatory Guidance 1.195, do not result in significant increases in the radiological dose consequences to the general public nor to the control room operators. All calculated dose consequences are within acceptance limits of Regulatory Guide 1.195.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes will not alter the requirements of the control room ventilation

system or its function during accident conditions. No new or different accidents result from performing the new revised actions and surveillances or programs required. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation which could create the possibility of a new or different kind of accident. The proposed changes are consistent with the safety analysis assumptions and current plant operating practices. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without mitigating actions. The proposed changes do not affect systems that are required to respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* David Terao.

### Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was

published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

*Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan*

*Date of application for amendment:* May 27, 2005.

*Brief description of amendment:* The amendment revised the technical specification (TS) testing frequency for the surveillance requirement (SR) in TS 3.1.4, "Control Rod Scram Times." Specifically, the change revised the frequency for SR 3.1.4.2, "Control Rod Scram Time Testing," from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in MODE 1."

*Date of issuance:* October 25, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 167.

*Facility Operating License No. NPF-43:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 19, 2005 (70 FR 41443).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated October 25, 2005.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* May 31, 2005.

*Brief description of amendment:* The amendment modifies Technical Specification (TS) requirements to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF-359, "Increased Flexibility in Mode Restraints."

*Date of issuance:* October 20, 2005.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 284.

*Facility Operating License No. DPR-59:* The amendment revised the TSs.

*Date of initial notice in Federal Register:* August 16, 2005 (70 FR 48204).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 2005.

*No significant hazards consideration comments received:* No.

*Exelon Generating Company, LLC, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois*

*Date of application for amendment:* December 17, 2004, as supplemented by letter dated September 28, 2005.

*Brief description of amendment:* The amendments revised Appendix B, Environmental Protection Plan (non-radiological), of the Byron Station Facility Operating Licenses.

*Date of issuance:* October 18, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 145.

*Facility Operating License Nos. NPF-37 and NPF-66:* The amendments revised the Environmental Protection Plan.

*Date of initial notice in Federal Register:* April 12, 2005 (70 FR 19115).

The supplement dated September 28, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a

Safety Evaluation dated October 18, 2005.

*No significant hazards consideration comments received:* No.

*Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* October 25, 2004, as supplemented by letter dated August 1, 2005.

*Brief description of amendment:* The amendment revises the required channels per trip system for several instrument functions contained in Technical Specification Tables 3.3.6.1-1, "Primary Containment Isolation Instrumentation," 3.3.6.2-1, "Secondary Containment Isolation Instrumentation," and 3.3.7.1-1 "Control Room Emergency Filter System Instrumentation."

*Date of issuance:* October 27, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment No.:* 212.

*Facility Operating License No. DPR-46:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 4, 2005 (70 FR 402).

The supplement dated August 1, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 2005.

*No significant hazards consideration comments received:* No.

*PSEG Nuclear LLC, Docket No. 50-272, Salem Nuclear Generating Station Unit No. 1, Salem County, New Jersey*

*Date of application for amendment:* February 23, 2005, as supplemented by letters dated August 2, 2005, and September 21, 2005.

*Brief description of amendment:* The amendments revised Technical Specifications (TSs) to implement a new steam generator tube surveillance program that is consistent with the program proposed by the TS Task Force (TSTF) in TSTF-449.

*Date of issuance:* October 14, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 268.

*Facility Operating License No. DPR-70:* The amendments revised the TSs.

*Date of initial notice in Federal Register:* May 10, 2005 (70 FR 24655). Supplements dated August 2, 2005, and September 21, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 2005.

*No significant hazards consideration comments received:* No.

*PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* March 4, 2005, as supplemented August 2, 2005.

*Brief description of amendments:* These amendments extend the completion time from 1 hour to 24 hours for Actions "a" and "b" of Salem Nuclear Generating Station, Unit Nos. 1 and 2 Technical Specification (TS) 3.5.1, "Accumulators," which requires restoration of an accumulator when it has been declared inoperable for reasons other than boron concentration in the accumulator not being within the required range.

*Date of issuance:* October 14, 2005.

*Effective date:* As of the date of issuance and to be implemented within 60 days.

*Amendment Nos.:* 267 and 249.

*Facility Operating License Nos. DPR-70 and DPR-75:* The amendments revised the TSs.

*Date of initial notice in Federal Register:* May 24, 2005 (70 FR 29800).

The August 2, 2005, supplement provided clarifying information only and did not change the scope of the proposed amendment, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 2005.

*No significant hazards consideration comments received:* No.

*Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California*

*Date of application for amendment:* January 24, 2005.

*Brief description of amendment:* The amendment removes unnecessary and

obsolete information from the facility operating license.

*Date of issuance:* September 21, 2005.

*Effective date:* September 21, 2005.

*Amendment No.:* 132.

*Facility Operating License No. DPR-54:* The amendment revised the License.

*Date of initial notice in Federal Register:* March 29, 2005 (70 FR 15947).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2005.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* August 12, 2004.

*Brief description of amendments:* The amendments revised Surveillance Requirement (SR) 4.7.8.d.3 of the Auxiliary Building Gas Treatment System (ABGTS) by deleting vacuum relief flow requirements. The change removes criteria from the SR that is not necessary to verify the operability of the ABGTS and eliminates confusion regarding the basis for the vacuum relief flow requirement.

*Date of issuance:* August 18, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment Nos.:* 303 and 293.

*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revised the technical specifications.

*Date of initial notice in Federal Register:* October 12, 2004 (69 FR 60687).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 2005.

*No significant hazards consideration comments received:* No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* October 27, 2004, as supplemented by letter dated June 17, 2005.

*Brief description of amendment:* The amendment (1) deleted Conditions 2.C.(3), 2.C.(4), 2.C.(6) through 2.C.(14), Section 2.F, and Attachments 1 and 2, and (2) revised Conditions 2.C.(1) and 2.C.(5), to the facility operating license, to reflect completed requirements. In addition, the list of attachments and appendices to the operating license was revised to reflect the deletion of Attachments 1 and 2. The proposed

changes to Technical Specifications Table 5.5.9-2, "Steam Generator Tube Inspection," and Table 5.5.9-3, "Steam Generator Repaired Tube Inspection," were also submitted in the licensee's application dated September 17, 2004 (ULNRC-05056), for the replacement steam generator project and were approved in Amendment No. 168, which was issued in the NRC letter dated September 29, 2005.

*Date of issuance:* October 25, 2005.

*Effective date:* October 25, 2005, and shall be implemented within 90 days of the date of issuance.

*Amendment No.:* 169.

*Facility Operating License No. NPF-30:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* December 7, 2004 (69 FR 70723). The June 17, 2005, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2005.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 31st day of October, 2005.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 05-22002 Filed 11-7-05; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Notice of Availability of Interim Staff Guidance Documents for Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

#### FOR FURTHER INFORMATION CONTACT:

James Smith, Project manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Telephone: (301) 415-6459; fax number: (301) 415-5370; e-mail: [jas4@nrc.gov](mailto:jas4@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

### I. Introduction

The Nuclear Regulatory Commission (NRC) continues to prepare and issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analysis, license applications or amendment requests or other related licensing activities for fuel cycle facilities under subpart H of 10 CFR part 70. FCSS-ISG-08 has been issued and is provided for information.

### II. Summary

The purpose of this notice is to provide notice to the public of the issuance of FCSS-ISG-08, Revision 0, which provides guidance to NRC staff to address accident sequences that may result from natural phenomena hazards relative to license application or amendment request under 10 CFR Part 70, Subpart H. FCSS-ISG-08, Revision 0, has been approved and issued after a general revision based on NRC staff and public comments on the initial draft.

### III. Further Information

The document related to this action is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS ascension number for the document related to this notice is provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Interim staff guidance	ADAMS Accession No.
FCSS Interim Staff Guidance-08, Revision 0.	ML052650305

This document may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments on these documents may be forwarded to James Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001.

Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415-6459; fax number: (301) 415-5370; e-mail: [jas4@nrc.gov](mailto:jas4@nrc.gov).

Dated at Rockville, Maryland this 27th day of October 2005.

For the Nuclear Regulatory Commission.

**Melanie A. Galloway,**

*Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

### Attachment—FCSS Interim Staff Guidance-08, Revision 0, Natural Phenomena Hazards

*Prepared by Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards*

### Issue

Additional guidance is required to address accident sequences that may result from natural phenomena hazards in the context of a license application or an amendment request under Title 10 Code of Federal Regulations (10 CFR) part 70, subpart H.

### Introduction

This Interim Staff Guidance (ISG) provides additional guidance for reviewing the applicant's (or licensee's) evaluation of natural phenomena hazards up to and including "highly unlikely" events for both new and existing facilities.

### Discussion

The performance requirements of 10 CFR 70.61 for facilities processing special nuclear materials require that individual accident sequences resulting in high consequences to workers and the public be "highly unlikely" and that sequences resulting in intermediate consequences to these receptors be "unlikely." Although the threshold levels that differentiate high consequence events from intermediate consequence events are established in the regulations, the definitions of "highly unlikely" and "unlikely" are not. Definitions of these terms must be described in the integrated safety analysis (ISA) summary submitted by applicants and licensees according to 10 CFR 70.65(b)(9) and subjected to staff approval. Further description of the acceptance criteria for the definitions of these terms can be found in Chapter 3 of NUREG-1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility."

The implementation of these requirements may vary somewhat due to different definitions of likelihood proposed by different applicants (or

licensees).<sup>1</sup> The consequence thresholds of the performance requirements (except for chemical releases) are specified quantitatively in the regulation. The regulation and its performance requirements pertain to existing facilities as well as proposed facilities and apply to man-made external hazards and natural phenomena hazards as well as process hazards. However, new facilities and new processes at existing facilities must also address 10 CFR 70.64 requirements which includes the baseline design criterion for natural phenomena hazards (10 CFR 70.64(a)(2)). This baseline design criterion requires that “the design must provide for adequate protection against natural phenomena with consideration of the most severe documented historical events for the site.” The Statement of Considerations (Reference 2) describes the application of the baseline design criteria as consistent with good engineering practice, which dictates that certain minimum requirements should be applied to design and safety considerations. The baseline design criteria must be applied to the design of new facilities and new processes at existing facilities, but does not require retrofits to existing facilities or existing processes (e.g., those housing or adjacent to the new processes). Also included in 10 CFR 70.64(b) is a requirement for incorporation of defense-in-depth in design and a requirement to prefer engineered controls over administrative controls.

New structures associated with facilities being reviewed, such as the gas centrifuge facilities and the Mixed Oxide Fuel Fabrication Facility (MOX), will be designed and constructed to meet the seismic regulatory requirements. Hence, these facilities and additional new facilities to be licensed under 10 CFR part 70 are not expected to present designs with seismic deficiencies. New facilities can also be expected to be above a “highly unlikely” flood such as the PMF and can be expected to withstand tornado winds and missiles, if necessary.

Most structures at existing nuclear fuel cycle facilities are built to a model building code which includes meeting a design basis earthquake having an exceedance probability of  $2 \times 10^{-3}$  per year to less than  $10^{-3}$  per year (Department of Energy (DOE) Standard-

1020–2002, Appendix C). Existing facilities are generally sited above the 100-year floodplain and are designed for wind as well as snow and ice loading as specified in applicable building codes. Extreme natural events such as “highly unlikely” floods and/or earthquakes have not been calculated for many existing sites, and it would be expensive and time consuming to do so.

The staff believes that many existing facilities can be shown to be in compliance with, or, at least, near compliance with, the performance requirements of the regulation by accounting for conservatism in the seismic, flooding, and wind design of the facility. In addition, relatively minor engineered improvements and administrative measures may further enhance safety, at least with respect to the public and other off-site receptors.

#### *Seismic Hazards*

Potential damage to and/or failure of items relied on for safety (IROFS) due to ground movement and/or the seismic response of adjacent or interior IROFS must be considered in the ISA/ISA Summary accident sequence evaluations. Damage or failures that also should be considered include:

1. Seismic-induced failure of a facility component which is not an IROFS but which can fall and damage an IROFS, for example, a heavy load drop from a crane on a container.
2. Displacement of adjacent IROFS during a seismic event, causing them to pound together.
3. Displacement of adjacent components resulting in failure of connecting pipes or cables resulting in flooding, fires, and/or releases of radiological or chemical materials.

Seismic event evaluations must also consider potential multiple failure of IROFS. For example, multiple failures of tanks.

DOE has also recognized the difference between earthquake design probability and the probability that a safety component cannot perform its function. To quantify this difference, DOE has developed a risk reduction factor, R, as the ratio between the seismic hazard exceedance probability and the performance goal probability. Conservatism in nuclear facility design arising from factors such as use of prescribed analysis methods, specification of material strengths, and limits on inelastic behavior explains at least part of this apparent reduction in actual risk. This risk reduction factor is discussed in Appendix C of DOE–STD–1020–2002 (Reference 3).

For a consequence to occur to the public or external site workers, licensed

material or hazardous chemicals that could affect the safety of licensed material must be released through at least one, and often two, confinement barriers, for example:

1. Storage containers, gloveboxes, tanks, or handling devices,
2. Ventilation system dynamic confinement and filtration, and/or
3. Building structural shell.

Criticalities, on the other hand, may result from the introduction of a moderator or loss of safe geometric control of confined materials.

By using risk reduction factors calculated for a facility and its specific components and/or making estimates of the degree of failure by comparison with the observed behavior of similarly constructed buildings during severe earthquakes, reasonable scenarios can be postulated. These scenarios may not release all the material at risk or present an unimpeded leak path to receptors. For example, some facilities might be able to show that even with an earthquake that is “highly unlikely” only certain types of containers or confinement systems are likely to be breached. If the amount of material contained in such containers is variable, then that probabilistic component may be factored into the overall likelihood of the accident sequence. If employing some of these mitigating considerations to the analysis requires reliance on special containers or procedures, then additional IROFS may also be needed. Another factor to be considered is the likely rate of release based on the damage sustained. For example, some facilities may lose dynamic confinement but maintain building integrity. In some processes, radiological and/or chemically hazardous material is held inside its primary containment at subatmospheric pressure. In these cases, even though the primary containments are inside a structure designed to withstand less than a “highly unlikely” earthquake, the subatmospheric conditions may be sufficient to limit both facility worker and off-site doses in the event of a greater earthquake. For example, an earthquake that results in limited subatmospheric containment losses may allow adequately trained workers to evacuate and/or take mitigative actions. The buildings containing cylinders of liquid UF<sub>6</sub> at gas centrifuge facilities are designed for a “highly unlikely” earthquake. In addition, some buildings at one of the proposed facilities are equipped with a seismically-activated interlock (an IROFS) that will shut off the buildings’ heating, ventilation, and air conditioning system during an event,

<sup>1</sup> For natural phenomena, deterministically defined events such as the probable maximum flood (PMF) or safe shutdown earthquake (SSE) which are used as reactor design bases can also be applied to 10 CFR Part 70 facilities as “highly unlikely” events. The actual probability (or likelihood) of such events may be difficult to define quantitatively and varies from site to site.

thus limiting any leakage of UF<sub>6</sub> to the outside.

#### *Flooding Hazards*

Most fuel cycle licensees do not require large quantities of cooling water and, therefore, do not need to be located near large bodies of water. A site licensed under 10 CFR Part 70 does not need to meet prescriptive flood protection requirements but does have to meet the performance requirements for all credible events including flooding. A site meeting the flood protection requirements of a commercial reactor should be considered as being designed or located adequately to withstand a "highly unlikely" flooding event. NUREG-1407, "Procedural and Submittal Guidance for the Individual Plant Examination of External Events for Severe Accident Vulnerability," Section 2.4, states that the design basis flood (which for river sites is the probable maximum flood) as described in Regulatory Guide 1.59, "Design Basis Flooding for Nuclear Power Plants," is estimated to have an exceedance frequency of less than 10<sup>-5</sup> per year. Sites that do not meet this level of protection can still meet the 10 CFR 70.61 performance requirements but have to be considered on an individual basis.

In evaluating the effects of flooding on existing facilities, the following flood-related hazards should be considered:

#### River Flooding

- Inundation and hydrostatic loading
- Dynamic forces
- Wave action
- Sedimentation and erosion
- Ice loading

#### Upstream Dam Failures

- Inundation and hydrostatic loading
- Dynamic forces
- Erosion and sedimentation

#### Precipitation/Local Storm Runoff

- Inundation (local ponding) and hydrostatic loading
- Dynamic loads (flash flooding)

#### Tsunami, Seiche, Hurricane Storm Surge

- Inundation and hydrostatic loading
- Dynamic forces
- Wave action

Methods for determining these flooding and water-related effects for reactor sites are described in American National Standards Institute/American Nuclear Society 2.8, "Determining Design Basis Flooding at Power Reactor Sites." These methods can be applied to 10 CFR 70.61 analyses with less conservatism in some of these parameters.

A standard siting requirement for residential and commercial developments is to be above the 100-year floodplain. For large river basins, warning time and time to secure materials and evacuate personnel will probably be available. For small streams there may be relatively little warning in regard to thunderstorms and localized rainfall. In such cases, rapid actions may be the only administrative protection available. In evaluating the effectiveness of proposed protection, the effects of inundation, hydrostatic loading, erosion, and sedimentation will need to be evaluated. At a minimum, this would require that criticality events be prevented and materials remain confined within site structures.

At some sites, a delineation of the 500-year floodplain may also be available. If the site is above the 500-year floodplain, flooding may be considered an unlikely event<sup>2</sup> depending on the quality of the estimate. In this category, criticality events should still be prevented, but the breaching of a limited number of material containers may be allowable under the performance requirements (up to 25 rem for the public, up to 100 rem for workers, and a specified release limit) for events, that in terms of likelihood, are between "unlikely" and "highly unlikely."

In addition to the facility's location relative to the 100-year or 500-year floodplains, the effects of local intense precipitation and snow load should be considered. Local intense precipitation especially with snow can result in roof collapse and localized site flooding. Normally, protection from local precipitation and snow is relatively easy to achieve in roof design and local site drainage design.

#### *Wind and Tornado Loading*

Wind design for an existing facility if prescribed by an applicable building code would have an annual exceedance probability of greater than or equal to 2 - 10<sup>-2</sup>. At such relatively high probabilities, tornado design criteria are not specified. However, depending on the geographical location of the facility, the effects of a tornado with an annual exceedance probability of 10<sup>-5</sup> or greater may need to be considered.

Wind forces on walls of structures should be determined using appropriate

<sup>2</sup> Even if the licensee defines unlikely as less than 10<sup>-3</sup> per year for the process sequences in the ISA Summary, the conservative assumptions inherent in most flood plain hydrologic studies such as those performed for Federal Emergency Management Agency flood insurance rate maps should justify the consideration of flooding above the 500-year floodplain as an unlikely event.

pressure coefficients, gust factors, and other site-specific adjustments. If the wind is likely to blow inside the structure, either through design or wind-driven missile vulnerability, the effects of wind on internal IROFS requires consideration. If the winds are from a tornado, the effects of the atmospheric pressure change (APC) associated with the tornado must be considered. Normally, ventilation systems are most vulnerable to APC but windows, buried tanks, and sand filters can also be affected.

For straight winds, hurricanes, and weak tornadoes, missile criteria as specified in Table 3-3 of DOE-STD-1020-2002 (Reference 3) may be considered. The missile specified is a 15 pound, 2 inches by 4 inches plank at a specified elevation and impact velocity. For facilities which may be subjected to more severe tornado missiles, the guidance in Tables 3-4 and/or 3-5 of DOE-STD-1020 may be followed. For the tornado, a 3,000 pound automobile rolling and tumbling on the ground should also be considered. For such evaluations, the probability of the entire sequence should be considered, and missile criteria from either Tables 3-4 or 3-5 of DOE-STD-1020 may be used as appropriate.

#### *Considerations for Existing Processes at Existing Facilities*

Existing processes at existing facilities are not required to address 10 CFR 70.64 baseline design criteria. They must still meet the performance requirements of 10 CFR 70.61 including accidents caused by natural phenomena, for which the staff may require additional IROFS to meet the performance requirements. For existing facilities, additional administrative controls/IROFS can be used to meet the performance requirements without the need for design features normally required by accepted engineering practice. For plants where near compliance can be obtained and complete compliance will be relatively costly, an exemption to the regulation may be requested.

As discussed earlier, many existing 10 CFR Part 70 facilities are not designed for an earthquake beyond that specified in applicable building codes. Although this design may provide fairly good seismic protection to the structure, it may not protect internal equipment. Also, an existing facility may not be designed to any specific seismic criteria in which case its ability to withstand earthquakes can only be estimated based on comparison with similar structures or through complex structural analysis. In such cases, licensees may add

additional IROFS to meet the performance requirements. An example where such IROFS (procedures and upgrades) may be effectively implemented could be a facility where the consequences of a release of licensed material to the public in a seismic event would be from fires and/or explosions. In this case, fixes such as seismically qualified flammable gas shutoff valves or electrical shutoffs might provide a large decrease in potential seismic consequences.

In regard to flooding, flood elevations beyond that of the 100-year flood may not have been determined for the site. For sites in close proximity to a river, these determinations could be expensive and time consuming. For these cases, flood warning time may allow measures such as moving material at risk and/or blocking doors and openings in the facility structure.

Improving a facility's ability to withstand high winds, rain and snow loads, and exterior fires can likewise be improved with a combination of administrative procedures and engineered improvements. Removing material at risk from under walls or roofs that are not seismically designed can reduce potential releases in case of collapse from winds or roof loads.

Exemptions to the regulation may still be required for existing facilities even with administrative and engineered improvements. In regard to consequences to the public, complete compliance with 10 CFR 70.61 using realistic assumptions should be the goal if obtainable. Compliance with 10 CFR 70.61 regarding consequences to facility workers may require a request for an exemption once personnel protective equipment, emergency procedures, and worker training is accounted for. In evaluating a request for an exemption to the regulation, the expected operational life of the facility should also be factored into the determination of risk.

#### *Considerations for New Processes at Existing Facilities*

The design of new processes at existing facilities must address natural phenomena hazards in accordance with 10 CFR 70.64 (a)(2) as well as the performance requirements of 10 CFR 70.61. Nevertheless, new processes at existing facilities may have the same problems in demonstrating compliance with 10 CFR 70.61 in regard to accident sequences initiated by natural phenomena as existing facilities based on the design and/or siting of the original structures. In the case of new processes, the Nuclear Regulatory Commission staff should expect compliance with the performance

requirements of 10 CFR 70.61 to the extent possible given the existing facility design and location. New processes at existing facilities also must meet the requirements of 10 CFR 70.64(b) which requires defense-in-depth and a preference for engineered controls over administrative controls. However, structural improvements, permanent flood barriers, and other engineered improvements which could be considered retrofits cannot be required by the staff for application to existing structures. New structural features within existing structures to prevent breaches in containment in the event of natural phenomena hazards may be considered, however. An example might be a seismically-designed vault to hold radioactive materials associated with a new process. In regard to new processes, engineered controls, where feasible, are preferred over administrative procedures that might otherwise be proposed for an existing process with a limited operational lifetime. Such engineered improvements may not be required for licensing but could be scheduled to replace administrative procedures or other long-term compensatory measures on a timely basis after the start of operations. The object is to encourage engineered safety in new processes compared to equivalent existing process while recognizing the restraints of the existing structures and location. Although primarily aimed at reducing risk to the public, the emphasis on engineered safety may also be applied to worker consequences in a way consistent with what has been accepted at other facilities.

#### *Regulatory Basis*

10 CFR 70.61 specifies performance requirements associated with risks identified by an ISA.

10 CFR 70.64 specifies requirements for new facilities or new processes at existing facilities including baseline design criteria (a)(2), "Natural Phenomena Hazards."

#### *Technical Review Guidance*

In reviewing the applicant's evaluation of the effects of natural phenomena on its facility, it should be recognized that estimates of "unlikely" and "highly unlikely" natural phenomena such as the PMF or SSE may not exist for the particular site. Hence, extrapolation and/or transposition of extreme event estimates made for other relatively nearby facilities (such as power reactor sites) should be allowed where feasible and technically justifiable. In addition, sophisticated probabilistic tools such as

Bayesian analysis or Monte Carlo sampling methods need not be employed to improve the estimate of likelihoods of natural phenomena event sequences unless desired by the applicant (or licensee). For the purpose of determining appropriate values of extreme events, deterministic events such as the probable maximum flood or safe shutdown earthquake can be used in place of purely probabilistically determined "highly unlikely" events and may be preferable, depending on the quality of historical data. Where extreme events need to be coupled with other probability-driven mechanisms such as the release fraction or transport pathway, already low likelihood combinations do not have to be made even less likely with the use of conservative parameters.

For existing facilities, due credit should be given to analysis assumptions and administrative controls, emergency procedures, and active engineered controls that do not change the design bases of the facility structures to natural phenomena. If the ISA/ISA Summary demonstrates that the existing facility is near compliance (within an order of magnitude of a likelihood threshold or within 50 percent of meeting a consequence threshold, but not both), an exemption to the regulation may be considered.

An example evaluation for an amendment request is provided in the appendix to this ISG.

#### **Recommendation**

This guidance should be used to supplement NUREG-1520, Chapter 3, Integrated Safety Analysis.

#### **References**

- U.S. Code of Federal Regulations, Title 10, Energy, Part 70, "Domestic Licensing of Special Nuclear Material."
- U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG-1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility." NRC: Washington, D.C. March 2002.
- Nuclear Regulatory Commission (U.S.), Washington, D.C. "Domestic Licensing of Special Nuclear Material; Possession of a Critical Mass of Special Nuclear Material." Federal Register: Vol. 65, No. 181, pp. 56211-56231. September 18, 2000.
- NUREG-1407, "Procedural and Submittal Guidance for the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities." NRC: Washington, D.C. June 1991.
- Regulatory Guide 1.59, Revision 2, "Design Basis Flooding for Nuclear Power Plants." NRC: Washington, D.C. August 1977.
- U.S. Department of Energy (U.S.) (DOE). DOE-Standard-1020-2002, "Natural Phenomena Hazards Design and Evaluation Criteria for Department of Energy Facilities." DOE: Washington, D.C. 2002.

American National Standards Institute/ American Nuclear Society (ANSI/ANS) ANS-2.8, "Determining Design Basis Flooding at Power Reactor Sites." ANSI/ANS: July 1992.

Dated: October 28, 2005.

Robert C. Pierson,  
Director, Division of Fuel Cycle Safety and Safeguards, NMSS.

#### APPENDIX—Example Natural Phenomena Hazard Review for Compliance with 10 CFR 70.61

This example review is for an amendment to authorize operations in a blended low-enriched uranium oxide conversion building (OCB). The site is located near a river and is just above the 100-year flood plain of a nearby creek. The Effluent Process Building (EPB) was also part of the amendment but was not evaluated because the quantities of radioactive material or hazardous chemicals (that come under NRC regulation) contained in the EPB are not considered sufficient to exceed the 10 CFR 70.61 consequence threshold for "unlikely" events.

##### Seismic Evaluation

The OCB is of reinforced concrete construction and is constructed to seismic criteria contained in the Standard Building Code (SBC-1999) which is equivalent to being designed for an earthquake having a probability of exceedance of approximately  $4 \times 10^{-4}$  per year. Using Appendix C of DOE-STD-1020-2002, a risk reduction factor of 4 was determined by U.S. Nuclear Regulatory Commission (NRC) staff, giving the structure a likelihood of significant damage from an earthquake of  $10^{-4}$  per year or less. Hence, the collapse or loss of building integrity from an earthquake may be considered to be "highly unlikely" as the probabilistic value of "highly unlikely" indicated by the applicant was a probability of exceedance of  $10^{-4}$  to  $10^{-5}$  per year. Within the building, the material at risk consists of low enriched uranyl nitrate liquid, ammonium diuranate slurry, and uranium dioxide powder. All of these materials are expected to be within containers and spillage during a seismic event is expected to be minimal. Since the building is expected to retain its integrity, the leak path factor will be relatively low even without dynamic confinement from the ventilation system. Facility workers are expected to take actions to limit personal intake of radionuclides. The staff concludes that the OCB complies with the performance requirements of 10 CFR 70.61 with regard to seismic events.

##### High Winds Evaluation

The OCB structure is also designed for wind loads in accordance with the SBC-1999, and the probability of a tornado impacting the facility is less than  $10^{-5}$  per year. Therefore, the facility needs only to be evaluated in regard to the effects of wind loads and missiles, but not for tornadoes. The reinforced concrete exterior walls of the OCB are considered by NRC staff to be adequate to withstand high wind velocities as well as missiles (from DOE-STD-1020-2002) that should be assumed for such events. A collapse of building walls due to wind forces

such that radioactive material would escape is considered to be "highly unlikely" by NRC staff. In addition, the meteorological conditions likely to result in severe winds may be forecast in advance, and protective measures taken. The staff concludes that the OCB complies with the performance requirements of 10 CFR 70.61 with regard to wind events.

##### Flooding Evaluation

The lowest floor in the OCB is 15 feet above the 100-year flood plain from an adjacent creek. From a review of the topography of the site area, it appears that flooding of the site could occur, most likely, from flooding on the nearby river with coincident flooding on the adjacent creek which could back up through the railroad culvert. This event is expected to have warning time and may overtop the railroad embankment to the north of the facility and flood parts of the town nearby. However, the facility is sufficiently removed from the main channel of the river such that flood-induced scouring and erosion would not be expected. In addition, the hydrostatic loading from the flood on the exterior walls of the OCB would not be expected to cause collapse. The primary concern is inundation which could float unsecured containers within the OCB but not remove them from the facility. A criticality event can not be excluded, but could occur only in the flooded and, therefore, evacuated section of the plant and would not affect facility workers. In addition, the warning time would allow the movement of material to reduce the likelihood of a flood-induced criticality. The staff concludes that the OCB complies with the performance requirements of 10 CFR 70.61 with regard to flooding.

[FR Doc. 05-22199 Filed 11-7-05; 8:45 am]

BILLING CODE 7590-01-P

#### OFFICE OF MANAGEMENT AND BUDGET

##### Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Federal Advisory Committee meetings.

**SUMMARY:** The Office of Management and Budget announces four meetings of the Acquisition Advisory Panel (AAP or "Panel") established in accordance with the Services Acquisition Reform Act of 2003.

**DATES:** There are four meetings announced in this **Federal Register** Notice. Public meetings of the Panel will be held on November 29th and December 16th, 2005 and January 5th and January 19th, 2006. All meetings

will begin at 9 a.m. eastern standard time and end no later than 5 p.m.

**ADDRESSES:** The November 29, 2005 meeting will be held at the General Services Administration (GSA) Auditorium at 1800 F Street, NW., Washington, DC 20405. The location for the December 16, 2005, January 5, 2006, and January 19, 2006 meetings will be the Federal Deposit Insurance Corporation (FDIC) basement auditorium, 801 17th Street, NW., Washington DC 20434. The public is asked to pre-register one week in advance for all meetings due to security and/or seating limitations (see below for information on pre-registration).

**FOR FURTHER INFORMATION:** Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meetings, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: [laura.auletta@gsa.gov](mailto:laura.auletta@gsa.gov), phone/voice mail (202) 208-7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Ms. Anne Terry, AAP Staff Analyst, *in writing* at: [anne.terry@gsa.gov](mailto:anne.terry@gsa.gov), by fax at (202) 501-3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

##### SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at all meetings. At this time, the Panel does not expect to hold public meetings beyond the January 19, 2006 date. Any change will be announced in the **Federal Register**.

*All Meetings*—Selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (*see* <http://www.acqnet.gov/aap> for a list of working groups), will report their draft findings and recommendations during these meetings. While the Panel may hear from some additional invited speakers,

the focus of these meetings will be discussion of working group findings and recommendations. The Panel welcomes oral public comments at any of these meetings and has reserved one hour for this purpose at each meeting. Members of the public wishing to address the Panel during the meeting must contact Ms. Anne Terry, *in writing*, as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at <http://www.acqnet.gov/aap> under "Working Group Reports."

(c) *Availability of Materials for the Meetings:* Please see the Panel's Web site for any available materials, including draft agendas and minutes (<http://www.acqnet.gov/aap>). Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including "Questions for Government Buying Agencies," "Questions for Contractors that Sell Commercial Goods or Services to the Government," "Questions for Commercial Organizations," and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled "Proposal for Public Comment." The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(d) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

*Oral Comments:* Speaking times will be confirmed by Panel staff on a "first-come/first-served" basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Ms. Anne Terry, *in writing* (via mail, e-mail, or fax identified above for Ms. Terry) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for

speaking time will not be taken. Speakers are requested to bring extra copies of their comments and presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Terry one week in advance of the meeting.

*Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM-PC/Windows 98/2000/XP format).

**Please note:** Since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(e) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

**Laura Auletta,**

*Designated Federal Officer (Executive Director), Acquisition Advisory Panel.*

[FR Doc. 05-22238 Filed 11-7-05; 8:45 am]

BILLING CODE 3110-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27140; 812-13190]

### Special Situations Fund III, L.P., et al., Notice of Application

November 2, 2005.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

*Applicants:* Special Situations Fund III, L.P. ("SSF III"), Special Situations Fund III QP, L.P. ("SSF QP," and together with SSF III, the "Funds") and MGP Advisers Limited Partnership ("Adviser").

*Summary of Application:* Applicants request an order to permit certain purchase and sale transactions in connection with a proposed division of a registered closed-end management investment company into two separate companies (the "Transaction").

*Filing Dates:* The application was filed on May 19, 2005, and amended on November 2, 2005.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0609. Applicants, c/o Austin W. Marxe, MGP Advisers Limited Partnership, 153 East 53rd Street, 55th Floor, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel (202-551-6817), or Stacy L. Fuller, Branch Chief (202-551-6821) (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0102 (202-551-5850).

### Applicants' Representations

1. SSF III, a Delaware limited partnership, is a closed-end management investment company that is registered under the Act and operates as an "interval fund" under rule 23e-3 under the Act. Partnership interests ("Units") in SSF III are not registered under the Securities Act of 1933 ("1933 Act") and are sold in private offerings pursuant to Regulation D under the 1933 Act generally to "accredited investors," as defined in Regulation D. Each investor in SSF III that pays the Adviser an incentive allocation is also a "qualified client," as defined in rule 205-3 under the Investment Advisers Act of 1940, as amended ("Advisers

Act"). Under SSF III's fundamental policies and rule 23c-3, as well as its partnership agreement (the "Partnership Agreement"), SSF III conducts semi-annual repurchase offers for between 10% and 25% of outstanding Units, as determined by the individual general partners of SSF III (each, an "Individual General Partner," collectively, the "Board," and the Board together with the Adviser, the "General Partners"), who are responsible for the overall management and supervision of SSF III. SSF III may also sell Units to existing Unit holders with a limited partnership interest ("Limited Partners," and together with the General Partners, "Partners") and other investors in the future. SSF III's investment objectives are to maximize long-term capital appreciation by investing primarily in equity securities and securities with equity features, which are traded on a national securities exchange or Nasdaq. As of June 30, 2005, SSF III had approximately 451 Unit holders (92% of whom were qualified purchasers, as defined in section 2(a)(51) of the Act ("Qualified Purchasers," and such Unit holders, "Qualified Purchaser Unit Holders")) and approximately \$500 million in assets. SSF III's fees and expenses for the year ended December 31, 2004, as a percentage of average net assets, totaled 5.41% (including the Adviser's incentive allocation of 20% of net profits).<sup>1</sup>

2. SSF QP, a Delaware limited partnership that was formed on May 17, 2005 to effect the Transaction is excluded from regulation under the Act pursuant to section 3(c)(7) of the Act.<sup>2</sup> SSF QP has the same investment objectives as SSF III. SSF QP will have no assets until after the consummation of the Transaction. SSF QP will have the same administration fee and incentive allocation structure as SSF III. Applicants estimate that the fees and expenses for SSF QP (excluding any incentive allocation to the Adviser but including all other fees) would have been on a pro forma basis approximately 0.81% of average net assets for the calendar year ended December 31, 2004.<sup>3</sup> Beginning June 30, 2006, limited

partners of SSF QP may redeem their Units of SSF QP semi-annually on June 30 and December 31 of each calendar year, by providing written notice to the Adviser on or before June 15 or December 15, respectively, of such calendar year. The Adviser has the right to limit the aggregate redemptions of Units of SSF QP by limited partners in any semi-annual fiscal period to 10% of the outstanding Units at the last day of the period (after the redetermination of Units to reflect SSF QP's profit or loss as of the end of such period).

3. The Adviser, a Delaware limited partnership, is registered as an investment adviser under the Advisers Act. The Adviser is the investment adviser to the Funds. The Adviser is also a General Partner of SSF III and will be the general partner of SSF QP upon completion of the Transaction. AWM Investment Company, Inc. ("AWM") is the general partner of the Adviser and Austin W. Marx, David Greenhouse and Adam Stettner are limited partners of the Adviser (each, including AWM, a "Principal"). The Adviser and Mr. Marx each own a general partnership interest in SSF III totaling in the aggregate approximately 7% of outstanding Units. The other Principals each own a limited partnership interest in SSF III totaling approximately less than 1% of outstanding Units.

4. A provision in the applicable Treasury regulations,<sup>4</sup> which has allowed SSF III to operate as a registered investment company but not be taxed as a publicly traded partnership for federal income tax purposes ("Grandfather Clause"), will expire on December 31, 2005.<sup>5</sup> Unless SSF III satisfies a safe harbor in the Treasury regulations, any future determination of whether it

(as defined below) fully participated in the Exchange Tender Offer; (b) approximately 4.2% of the outstanding Units of SSF III (representing half of the Units of non-Qualified Purchaser Unit Holders (as defined below)) participated in the Cash Repurchase Offer; (c) the Adviser did not participate in the Cash Repurchase Offer; (d) the Adviser, and two Principals, Austin Marx and David Greenhouse, participated in the Exchange Tender Offer in the same proportion as other Limited Partners, as further described below; and (e) Adam Stettner, a Principal, did not participate in the Cash Repurchase Offer or the Exchange Tender Offer. The net result of the Transaction Participation Assumptions is that approximately 91.3% of SSF III's outstanding Units would be exchanged for Units of SSF QP, approximately 4.5% would remain in SSF III, and approximately 4.2% would be repurchased for cash. There can be no assurance that participation in the Cash Repurchase Offer and the Exchange Tender Offer will be similar to the Transaction Participation Assumptions.

<sup>4</sup> 26 CFR 1.7704-1.

<sup>5</sup> A publicly traded partnership is generally taxed as a corporation, *i.e.* subject to a double level of taxation.

would be taxed as a publicly traded partnership would be made by applying a facts-and-circumstances test. To continue to rely on a safe harbor and thereby avoid the uncertainty of a facts-and-circumstances test, SSF III may amend its repurchase policies to, among other things, reduce the repurchase offer amount on a semi-annual and annual basis to, respectively, 5% and 10% of outstanding Units.<sup>6</sup> Amending the repurchase policies as applicants intend to do to qualify for the safe harbor is not satisfactory to the largest Limited Partners, all of whom are Qualified Purchasers, because of the resulting decrease in the liquidity of their Units.

5. Applicants propose to conduct the Transaction to divide SSF III into two separate companies to accommodate the needs of the Qualified Purchaser Unit Holders and those Unit holders that are not Qualified Purchasers ("non-Qualified Purchaser Unit Holders").<sup>7</sup> Pursuant to the Transaction, SSF III would conduct an exchange offer for the Units of Qualified Purchaser Unit Holders in which they may tender their Units of SSF III and receive, in exchange, Units of SSF QP ("Exchange Tender Offer"). The Exchange Tender Offer will not be a taxable transaction for the Funds. In the Transaction, (a) SSF III would accept from Qualified Purchaser Unit Holders who elect to participate in the Exchange Tender Offer ("Exchanging Holders") Units of SSF III, (b) SSF III would transfer to SSF QP, on a strict pro rata basis, portfolio securities having a total net asset value ("NAV") equal to the total NAV of the SSF III Units, as calculated on December 30, 2005 (the "Valuation Date"), tendered in the Exchange Tender Offer, (c) SSF III would receive Units of SSF QP having a total NAV equal to both the total NAV of the SSF III Units tendered by Exchanging Holders and the total NAV of the portfolio securities transferred from SSF III to SSF QP,<sup>8</sup> and (d) SSF III would distribute the SSF QP Units to Exchanging Holders on a pro rata basis.<sup>9</sup>

6. Simultaneous with the Exchange Tender Offer, SSF III would conduct a

<sup>6</sup> Changes to SSF III's repurchase policies will be subject to the approval of a majority of the outstanding Units held by Limited Partners after completion of the Offers, as defined below.

<sup>7</sup> The Transaction is subject to the approval of a majority of the outstanding Units held by Limited Partners.

<sup>8</sup> SSF III is a Qualified Purchaser.

<sup>9</sup> Limited Partners and General Partners that tender in the Exchange Tender Offer will receive, respectively, limited and general partnership Units of SSF QP. The Adviser and two Principals will participate in the Exchange Tender Offer, tendering the same percentage of the Units they hold as all other Limited Partners tender of the Units they hold.

<sup>1</sup> Excluding the Adviser's incentive allocation, SSF III's fees totaled approximately .84% of average net assets. The Adviser's incentive allocation is subject to a high water mark.

<sup>2</sup> SSF QP has been formed in compliance with, and will be bound by the terms and conditions of, the application.

<sup>3</sup> For purposes of projecting the effects of the Transaction, the Applicants have assumed the Cash Repurchase Offer and the Exchange Tender Offer (each as defined below) were consummated as follows (collectively, the "Transaction Participation Assumptions"): (a) All Qualified Purchaser Unit Holders other than the Adviser and the Principals

cash repurchase offer (“Cash Repurchase Offer,” and together with the Exchange Tender Offer, the “Offers”), which would constitute the semi-annual cash repurchase offer currently required by rule 23c-3 and SSF III’s fundamental policies, as well as by the Partnership Agreement. The Cash Repurchase Offer would enable all Unit holders to tender their Units to SSF III in exchange for a cash payment equal to the NAV of the Units on the Valuation Date. The Cash Repurchase Offer would not be limited by the Exchange Tender Offer. The Cash Repurchase Offer would be for 10% of SSF III’s outstanding Units. If Limited Partners tender for repurchase in the Cash Repurchase Offer more than 10% of the outstanding Units, the Board would exercise its discretion to increase the Cash Repurchase Offer by 2% (for a total of 12% of Units outstanding). If Limited Partners tender more than 12% of the outstanding Units in the Cash Repurchase Offer, SSF III will repurchase Units tendered on a pro rata basis.<sup>10</sup> The Individual General Partners, Adviser and Principals will not participate in the Cash Repurchase Offer. Applicants believe that any non-Qualified Purchaser Unit Holder who tenders Units in the Cash Repurchase Offer will be able to receive cash for all Units tendered. The Adviser and two of its Principals, Austin Marx and David Greenhouse (in their individual capacities), will participate in the Exchange Tender Offer in the same proportion as the Limited Partners after giving effect to the Cash Repurchase Offer, that is, they will exchange Units in the same proportion as the Units held by all Limited Partners (other than Mr. Greenhouse) are exchanged, subject to the Adviser and the Individual General Partners holding collectively at least 1% of SSF III’s outstanding Units. Making the Transaction Participation Assumptions, following the Transaction, the Adviser and the Principals collectively would own approximately 7.7% of SSF III’s outstanding Units.

7. Applicants propose for the Offers to begin on November 17, 2005, and expire

<sup>10</sup> In the semi-annual repurchase offers made by SSF III over the last five years, which have typically been for 10% of outstanding Units, Limited Partners have never tendered for repurchase more than 4.13% of outstanding Units. In connection with SSF III’s most recent cash repurchase offer, after having received notice from SSF III of the expiration of the Grandfather Clause and the effect thereof on the operations of SSF III, SSF III Unit holders tendered less than 2% of outstanding Units for repurchase. Requests for repurchase have exceeded 5% of outstanding Units on a semi-annual basis and 10% of outstanding Units on an annual basis three times, in all cases resulting from significant tenders by the Adviser.

on December 16, 2005. For purposes of both Offers, the NAV of SSF III’s Units would be determined on the Valuation Date. Applicants intend to complete the Transaction on December 31, 2005, and to distribute proceeds of the Cash Repurchase Offer by January 6, 2006. Any and all costs and expenses incurred by SSF III in connection with the Cash Repurchase Offer will be incurred before SSF III calculates its NAV, and therefore will be reflected in the NAV, on the Valuation Date. All expenses associated with the Transaction will be paid by the Adviser or SSF QP. No repurchase fees, brokerage commissions, fees or other remuneration will be paid by SSF III, SSF QP or any Unit holder in connection with the Transaction. The Transaction will not be consummated until the Commission has issued an order relating to the application. Applicants have agreed not to make any material changes to the Transaction without prior approval of the Commission or its staff.

8. On May 2, 2005, the Board, including a majority of the Individual General Partners who are not “interested persons,” as defined in section 2(a)(19) of the Act (“Independent General Partners”), approved the Transaction on behalf of SSF III, subject to the Commission issuing an order pursuant to the application. Prior to approving the Transaction, the Board considered other alternatives. Specifically, the Board considered converting SSF III into a “regulated investment company” under the Internal Revenue Code of 1986, as amended, but rejected the alternative as inconsistent with its operations, including its treatment of operating losses and net capital losses. The Board also considered liquidating SSF III, but rejected the alternative in light of, among other things, the likelihood of liquidation causing Limited Partners to recognize taxable gain. In approving the Transaction, the Board concluded that: (a) The Transaction is consistent with the policies of SSF III, as recited in its registration statement, (b) the terms of the Transaction, including the consideration to be received by the Funds, are reasonable and fair and do not involve overreaching on the part of any person concerned, and (c) participation in the Transaction is in the best interests of SSF III and its Limited Partners, and the interests of existing Limited Partners of SSF III will not be diluted as a result of the Transaction. Applicants state that the Board, in reaching its conclusions, considered that SSF III is likely to be significantly smaller after the Transaction and that

there may, as a result, be a material increase in SSF III’s expense ratio. The Applicants estimate, making the Transaction Participation Assumptions and assuming the transactions were consummated on December 31, 2003, that the fees and expenses of SSF III (excluding any incentive allocation to the Adviser but including all other fees) for the calendar year ended December 31, 2004 would have been 1.57% of average net assets, rather than 0.84% of average net assets. Although this relative increase in SSF III’s expense ratio of 0.73% may be material, the Applicants state that the Board believes that the benefits of the Transaction to all Partners (including the continued service of the Adviser) outweigh the burden of any such increase in SSF III’s expense ratio.

#### Applicants’ Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person (“second tier affiliate”), acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an “affiliated person” as, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by or under common control with the other person; any officer, director, partner, copartner or employee of the other person; and, if the other person is an investment company, its investment adviser. Section 2(a)(9) of the Act defines control to mean the power to exercise a controlling influence over the management or policies of a company. Applicants state that the Adviser and Principals may each be deemed to be an affiliated person of SSF III and SSF QP, and that SSF III and SSF QP may be deemed to be affiliated persons of each other as both are under common control of the Adviser and the Principals. Applicants also state that to the extent that an Exchanging Holder owns 5% or more of the outstanding Units of SSF III, the Exchanging Holder could be deemed to be an affiliated person of SSF III (such Exchanging Holder, a “5% Affiliate”), and a second tier affiliate of SSF QP. Thus, applicants state, section 17(a) of the Act may prohibit the Adviser, Principals and 5% Affiliates from purchasing Units of SSF QP from SSF III, and prohibit SSF QP from purchasing portfolio securities of SSF III in exchange for SSF QP Units.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policies of each registered investment company concerned and with the general purposes of the Act. Applicants submit that the Transaction has been approved by the Board, including a majority of the Independent General Partners, is reasonable and fair to SSF III and its Unit holders and meets the requirements of section 17(b) of the Act. Applicants state that the Transaction will not result in dilution to Unit holders of SSF III because (a) it will be effected at the NAV of SSF III's Units, which NAV will be calculated in accordance with SSF III's policies and procedures, as set forth in its registration statement, and computed using the same methodologies that SSF III has used to calculate its NAV in connection with each routine repurchase offer since its inception,<sup>11</sup> and (b) it will involve a pro rata transfer of SSF III's portfolio securities to SSF QP. Applicants further state that, prior to the Transaction, any Limited Partner not wishing to remain invested in SSF III or become invested in SSF QP will be able to have his or her Units repurchased for cash at the NAV of the Units, and all expenses of the Transaction will be paid by the Adviser or SSF QP, including the cost of separating SSF III's portfolio between SSF III and SSF QP in the Transaction.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Exchange Tender Offer will be effected at the NAV of SSF III's Units determined in accordance with its registration statement under the Act.
2. The sale of portfolio securities by SSF III to SSF QP in the Transaction will comply with the terms of rule 17a-7(c), (d) and (f) under the Act.
3. At its next regular meeting following the Transaction, the Board of SSF III, including a majority of the Independent General Partners, will determine whether the Units were valued in accordance with condition 1 above.
4. SSF III will maintain and preserve for a period of not less than six years

<sup>11</sup> SSF QP has the same policies and procedures, and will employ the same methodologies to compute its NAV, as SSF III.

from the end of the fiscal year in which the Transaction occurs, the first two years in an easily accessible place, a written record of the Transaction setting forth a description of each security transferred, the terms of the Transaction, and the information or materials upon which the determination required by condition 3 was made.

5. In the Transaction, the portfolio securities will be distributed by SSF III to SSF QP on a pro rata basis, except that cash may be distributed in lieu of fractional shares.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 05-22163 Filed 11-7-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 7, 2005:

A Closed Meeting will be held on Thursday, November 10, 2005 at 10 a.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), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 10, 2005 will be:

- Formal orders of investigations;
- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Opinion; and a
- Regulatory matter bearing enforcement implications.

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: November 3, 2005.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 05-22292 Filed 11-3-05; 4:11 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52718; File No. SR-Amex-2005-060]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, and 3 Thereto Relating to Amendments to the Obvious Error Rules

November 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 31, 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 21, 2005, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 4, 2005, the Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> On October 27, 2005, the Amex submitted Amendment No. 3 to the proposed rule change.<sup>5</sup> 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 to: (i) Amend the equity and index options obvious error rules to revise the manner in which an obvious price error is determined for both equity and index options; (ii)

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Form 19b-4 dated September 21, 2005, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> Amendment No. 2 corrected technical errors in the proposed rule text.

<sup>5</sup> Amendment No. 3 incorporated certain proposed revisions to Amex Rules 936 and 936-ANTE contained in Amendment No. 1 to Amex Rules 936C and 936C-ANTE and corrected an error in the proposed rule text of Amex Rules 936C and 936C-ANTE.

clarify the determination of "Fair Market Value" in connection with the index option obvious error rule; (iii) amend the equity and index options obvious error rules relating to an erroneous quote in the underlying security; (iv) amend the equity and index options obvious error rules to permit transactions executed outside of trading hours to be cancelled; (v) amend how obvious errors based on "verifiable disruptions or malfunctions of Exchange systems" as set forth in both the equity and index obvious error rules are adjusted or cancelled; and (vi) revise the equity and index options obvious error rules to amend the terms that relate to the cancellation of "no bid series."

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

**Rule 936. Cancellation and Adjustment of Equity Options Transactions**

This Rule governs the cancellation and adjustment of transactions involving equity options. Rules 936C and 936C—ANTE govern the cancellation and adjustment of transactions involving options on indexes, exchange-traded funds ("ETFs") and trust issued receipts ("TIRs"). Paragraphs (a)(1) and (2) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review. A member or person associated with a member may have a trade cancelled or adjusted if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error. An obvious pricing error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below \$2 .....	\$0.25
\$2 to \$5 .....	0.40
Above \$5 to \$10 .....	0.50
Above \$10 to \$20 .....	0.80
Above \$20 .....	1.00

**Definition of Theoretical Price.** For purposes of this Rule only, the Theoretical Price of an option series is, for series traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has

the most liquidity in that option class in the previous two calendar months. *The Theoretical Price will not include the last bid price (erroneous sell transaction) or last offer price (erroneous buy transaction) of the competing options exchange that has the most liquidity in that options class in the previous two calendar quarters if such competing options exchange widens its quote to incorporate the prior erroneous quote of the Exchange. In such a case, the Theoretical Price shall be the last bid price (erroneous sell transaction) and the last offer price (erroneous buy transaction) just prior to the trade, disseminated by the competing options exchange with the next best liquidity. If there are no competing options exchanges left without an erroneous quote, the Theoretical Price shall be the first quote of the competing options exchange, that has the most liquidity in that options class in the previous two calendar quarters, after the transaction(s) in question that does not reflect the erroneous quote.* If there are no quotes for comparison, designated Trading Officials will determine the Theoretical Price. For transactions occurring as part of an opening, the Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

(i) Cancellation or Price Adjustment. Obvious Pricing Errors will be cancelled or adjusted as follows.

- Transactions Between Amex specialists/registered options traders (ROTs): Where both parties to the transaction are Amex specialists/ROTs, the execution price of the transaction will be adjusted by Trading Officials to the prices provided in Paragraphs (A) and (B) below, minus (plus) an adjustment penalty ("adjustment penalty"), unless both parties agree to adjust the transaction to a different price or agree to cancel the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error.

(A) Erroneous buy transactions will be adjusted to their Theoretical Price plus an adjustment penalty of either \$.15 if the Theoretical Price is under \$3 or \$.30 if the Theoretical Price is at or above \$3.

(B) Erroneous sell transactions will be adjusted to their Theoretical Price minus an adjustment penalty of either \$.15 if the Theoretical Price is under \$3 or \$.30 if the Theoretical Price is at or above \$3.

- Transactions Involving at least one non-Amex specialist/ROT: Where one of the parties to the transaction is not an Amex specialist/ROT, the transactions will be cancelled by Trading Officials unless both parties agree to an

adjustment price for the transaction within thirty (30) minutes of being notified by Trading Officials of the Obvious Error.

(2) No Bid Series. Electronic transactions in series quoted no bid [at a nickel (*i.e.*, \$.05 offer)] will be cancelled provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid [at a nickel] at the time of execution.

(3) Verifiable Disruptions or Malfunctions of Exchange Systems: Electronic or open outcry transactions arising out of a "verifiable disruption or malfunction" in the use or operation of any Exchange (a) automated quotation, dissemination, execution, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.*, a quote/order that is frozen because of an Exchange system error and is repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or (b) automated quotation, dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible, provided there is Exchange documentation reflecting that the member sought to update or cancel the quote/order. With respect to verifiable disruptions or malfunctions of the Exchange's automated quotation system, documentation of the existence of the disruption or malfunction will be sufficient provided the automated quotation system was programmed to update or cancel a quote based upon specific changes in the underlying, those changes occurred and due to the disruption or malfunction the quote was not updated or cancelled. *Unless the parties agree to a price adjustment, the transaction will be cancelled.*

[Transactions that qualify for price adjustment will be adjusted to the Theoretical Price, as defined in paragraph (a)(1) above.]

(4) No Change

(5) Erroneous Quote in Underlying. (i) Electronic trades (this provision does not apply to trades executed in open outcry) resulting from an erroneous quote in the underlying security may be adjusted or canceled as set forth in paragraph (a)(1) above. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Rule 900 (b)(26)) during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this Rule, the average quote width shall be determined by adding the

quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing the number of quotes during such time period (excluding the quote in question).

(ii) *Electronic trades resulting from an erroneous quote in the underlying security may also be adjusted or cancelled as set forth in paragraph (a)(1)(i) above when (i) a national securities exchange or the Nasdaq Stock Market, Inc.'s quotes are not firm based upon direct communication from that market or dissemination of a message indicating the quotes are not firm or (ii) a national securities exchange or the Nasdaq Stock Market, Inc. has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes.*

(6) *Transactions Executed Outside of Trading Hours. All equity options transactions that occur outside of the trading hours of the Exchange will be cancelled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to Amex Rule 1.*

(b) through (e). No Change

Commentary

.01 through .03 No Change

\* \* \* \* \*

### Rule 936C. Cancellation and Adjustment of Index Option Transactions

This Rule only governs the cancellation and adjustment of transactions involving options on indexes, exchange-traded funds (ETFs) and trust issued receipts (TIRs). Rule 936 governs the cancellation and adjustment of transactions involving equity options. Paragraphs (a)(1), (2), (6) and (7) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade cancelled or adjusted if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) **Obvious Price Error.** An obvious pricing error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in Rule 958(c), the prescribed amount shall be: (a) the greater of \$0.10 or 10% for options

trading under \$2.50; (b) 10% for options trading at or above \$2.50 and under \$5; or (c) \$0.50 for options trading at \$5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 958(c), the prescribed error amount shall be: (a) the greater of \$0.20 or 20% for options trading under \$2.50; (b) 20% for options trading at or above \$2.50 and under \$5; or (c) \$1.00 for options trading at \$5 or higher.

(i) **Definition of Fair Market Value:** For purposes of this Rule only, the [f]Fair [m]Market [v]Value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). *Fair Market Value will not include the national best bid price (erroneous sell transaction) or national best offer price (erroneous buy transaction) of competing options exchanges if such competing options exchange(s) widen their quote(s) to incorporate the prior erroneous quote of the Exchange. In such a case, the Fair Market Value shall be the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous quote.* In multiply listed issues, if there are no quotes for comparison purposes, [f]Fair [m]Market [v]Value shall be determined by Trading Officials. For singly listed issues, [f]Fair [m]Market [v]Value shall be the midpoint of the first quote after the transaction(s) in question that does not reflect the *erroneous quote* [erroneous transaction(s)]. For transactions occurring as part of an opening, the Fair Market Value shall also be the midpoint of the first quote after the transaction(s) in question that does not reflect the *erroneous quote* [erroneous transaction(s)].

(2) No Change.

(3) **Verifiable Disruptions or Malfunctions of Exchange Systems.** Trades arising out of a "verifiable disruption or malfunction" in the use or operation of any Exchange (a) automated quotation, dissemination, execution, or communication system that caused a quote/order to trade in excess of its disseminated size (e.g., a quote/order that is frozen because of an Exchange system error and is repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or (b) automated quotation, dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible, provided there is Exchange documentation reflecting that the member sought to update or cancel the quote/order. With respect to verifiable disruptions or malfunctions of

the Exchange's automated quotation system, documentation of the existence of the disruption or malfunction will be sufficient provided the automated quotation system was programmed to update or cancel a quote based upon specific changes in the underlying, those changes occurred and due to the disruption or malfunction the quote was not updated or cancelled. *Unless the parties agree to a price adjustment, the transaction will be cancelled.*

[Transactions that qualify for price adjustment will be adjusted to the Fair Market Value, as defined in paragraph (a)(1)(i) above.]

(4) No Change.

(5) **Erroneous Quote in Underlying.** (i) A trade resulting from an erroneous quote in the underlying security may be cancelled or adjusted. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Rule 900(b)(26)) during the time period encompassing two minutes before and after the dissemination of such quote.

(ii) *Electronic trades resulting from an erroneous quote in the underlying security may also be adjusted or cancelled as set forth in paragraph (a)(1)(i) above when (i) a national securities exchange or the Nasdaq Stock Market, Inc.'s quotes are not firm based upon direct communication from that market or dissemination of a message indicating the quotes are not firm or (ii) a national securities exchange or the Nasdaq Stock Market, Inc. has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes.*

(6) No Change.

(7) **No Bid Series.** Electronic transactions in series quoted no bid [at a nickel (i.e., \$0.05 offer)] will be cancelled provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid [at a nickel] at the time of execution.

(8) *Transactions Executed Outside of Trading Hours. All index options transactions that occur outside of the trading hours of the Exchange will be cancelled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to Amex Rule 1.*

(b) through (e). No Change.

Commentary

.01 through .02. No Change.

\* \* \* \* \*

Rule 936—ANTE. Cancellation and Adjustment of Equity Options Transactions

This Rule governs the nullification and adjustment of transactions involving equity options. Rule 936C and 936C—ANTE governs the nullification and adjustment of transactions involving options on indexes, exchange-traded funds (“ETFs”) and trust issued receipts (“TIRs”). Paragraphs (a)(1) and (2) of this Rule have no applicability to trades executed in open outcry. (a) Trades Subject to Review. A member or person associated with a member may have a trade cancelled or adjusted if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error. An obvious pricing error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below \$2 .....	\$0.25
\$2 to \$5 .....	0.40
Above \$5 to \$10 .....	0.50
Above \$10 to \$20 .....	0.80
Above \$20 .....	1.00

Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option series is, for series traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option class in the previous two calendar months. *The Theoretical Price will not include the last bid price (erroneous sell transaction) or last offer price (erroneous buy transaction) of the competing options exchange that has the most liquidity in that options class in the previous two calendar quarters if such competing options exchange widens its quote to incorporate the prior erroneous quote of the Exchange. In such a case, the Theoretical Price shall be the last bid price (erroneous sell transaction) and the last offer price (erroneous buy transaction) just prior to the trade, disseminated by the competing options exchange with the next best liquidity. If there are no competing options exchanges left without an erroneous quote, the Theoretical Price shall be the first quote of the competing options exchange, that*

*has the most liquidity in that options class in the previous two calendar quarters, after the transaction(s) in question that does not reflect the erroneous quote.* If there are no quotes for comparison, designated Trading Officials will determine the Theoretical Price. For transactions occurring as part of an opening, the Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

(i) Cancellation or Price Adjustment. Obvious Pricing Errors will be cancelled or adjusted as follows.

- Transactions Between Amex specialists/registered options traders (ROTs): Where both parties to the transaction are Amex specialists/ROTs, the execution price of the transaction will be adjusted by Trading Officials to the prices provided in Paragraphs (A) and (B) below, minus (plus) an adjustment penalty (“adjustment penalty”), unless both parties agree to adjust the transaction to a different price or agree to cancel the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error.

(A) Erroneous buy transactions will be adjusted to their Theoretical Price plus an adjustment penalty of either \$.15 if the Theoretical Price is under \$3 or \$.30 if the Theoretical Price is at or above \$3.

(B) Erroneous sell transactions will be adjusted to their Theoretical Price minus an adjustment penalty of either \$.15 if the Theoretical Price is under \$3 or \$.30 if the Theoretical Price is at or above \$3.

- Transactions Involving at least one non-Amex specialist/ROT: Where one of the parties to the transaction is not an Amex specialist/ROT, the transactions will be cancelled by Trading Officials unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Trading Officials of the Obvious Error.

(2) No Bid Series. Electronic transactions in series quoted no bid [at a nickel (i.e., \$0.05 offer)] will be cancelled provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid [at a nickel] at the time of execution.

(3) Verifiable Disruptions or Malfunctions of Exchange Systems: Electronic or open outcry transactions arising out of a “verifiable disruption or malfunction” in the use or operation of any Exchange (a) automated quotation, dissemination, execution, or communication system that caused a quote/order to trade in excess of its disseminated size (e.g., a quote/order that is frozen because of an Exchange system error and is repeatedly traded) in

which case trades in excess of the disseminated size may be nullified; or (b) automated quotation, dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible, provided there is Exchange documentation reflecting that the member sought to update or cancel the quote/order. With respect to verifiable disruptions or malfunctions of the Exchange’s automated quotation system, documentation of the existence of the disruption or malfunction will be sufficient provided the automated quotation system was programmed to update or cancel a quote based upon specific changes in the underlying, those changes occurred and due to the disruption or malfunction the quote was not updated or cancelled. *Unless the parties agree to a price adjustment, the transaction will be cancelled.* [Transactions that qualify for price adjustment will be adjusted to the Theoretical Price, as defined in paragraph (a)(1) above.]

(4) No Change.

(5) Erroneous Quote in Underlying. (i) Electronic trades (this provision does not apply to trades executed in open outcry) resulting from an erroneous quote in the underlying security may be adjusted or canceled as set forth in paragraph (a)(1) above. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Rule 900 (b)(26)) during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing the number of quotes during such time period (excluding the quote in question).

(ii) *Electronic trades resulting from an erroneous quote in the underlying security may also be adjusted or canceled as set forth in paragraph (a)(1)(i) above when (i) a national securities exchange or the Nasdaq Stock Market, Inc.’s quotes are not firm based upon direct communication from that market or dissemination of a message indicating the quotes are not firm or (ii) a national securities exchange or the Nasdaq Stock Market, Inc. has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes.*

(6) *Transactions Executed Outside of Trading Hours.* All equity options transactions that occur outside of the trading hours of the Exchange will be canceled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to Amex Rule 1.

(b) through (e). No Change.

Commentary

.01 through .03. No Change.

\* \* \* \* \*

### Rule 936C—ANTE. Cancellation and Adjustment of Index Option Transactions

This Rule only governs the cancellation and adjustment of transactions involving options on indexes, exchange-traded funds (ETFs) and trust issued receipts (TIRs). Rule 936 and 936—ANTE governs the cancellation and adjustment of transactions involving equity options. Paragraphs (a)(1), (2), (6) and (7) of this Rule have no applicability to trades executed in open outcry.

#### (a) Trades Subject to Review

A member or person associated with a member may have a trade cancelled or adjusted if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) **Obvious Price Error.** An obvious pricing error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in Rule 958(c), the prescribed amount shall be: (a) the greater of \$0.10 or 10% for options trading under \$2.50; (b) 10% for options trading at or above \$2.50 and under \$5; or (c) \$0.50 for options trading at \$5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 958(c), the prescribed error amount shall be: (a) the greater of \$0.20 or 20% for options trading under \$2.50; (b) 20% for options trading at or above \$2.50 and under \$5; or (c) \$1.00 for options trading at \$5 or higher.

(i) **Definition of Fair Market Value:** For purposes of this Rule only, the [f]Fair [m]Market [v]Value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). *Fair Market Value will not include the national best bid price (erroneous sell transaction) or national best offer price (erroneous buy*

*transaction) of competing options exchange(s) if such competing options exchanges widen their quote(s) to incorporate the prior erroneous quote of the Exchange. In such a case, the Fair Market Value shall be the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous quote.* In multiple listed issues, if there are no quotes for comparison purposes, [f]Fair [m]Market [v]Value shall be determined by Trading Officials. For singly-listed issues, [f]Fair [m]Market [v]Value shall be the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous quote [erroneous transaction(s)]. For transactions occurring as part of an opening, the Fair Market Value shall also be the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous quote [erroneous transaction(s)].

(2) No Change.

(3) **Verifiable Disruptions or Malfunctions of Exchange Systems.** Trades arising out of a "verifiable disruption or malfunction" in the use or operation of any Exchange (a) automated quotation, dissemination, execution, or communication system that caused a quote/order to trade in excess of its disseminated size (e.g., a quote/order that is frozen because of an Exchange system error and is repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or (b) automated quotation, dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible, provided there is Exchange documentation reflecting that the member sought to update or cancel the quote/order. With respect to verifiable disruptions or malfunctions of the Exchange's automated quotation system, documentation of the existence of the disruption or malfunction will be sufficient provided the automated quotation system was programmed to update or cancel a quote based upon specific changes in the underlying, those changes occurred and due to the disruption or malfunction the quote was not updated or canceled. *Unless the parties agree to a price adjustment, the transaction will be canceled.*

[Transactions that qualify for price adjustment will be adjusted to the Fair Market Value, as defined in paragraph (a)(1)(i) above.]

(4) No Change.

(5) **Erroneous Quote in Underlying.** (i) A trade resulting from an erroneous quote in the underlying security may be canceled or adjusted. An erroneous quote occurs when the underlying

security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Rule 900(b)(26)) during the time period encompassing two minutes before and after the dissemination of such quote.

(ii) *Electronic trades resulting from an erroneous quote in the underlying security may also be adjusted or canceled as set forth in paragraph (a)(1)(i) above when (i) a national securities exchange or the Nasdaq Stock Market, Inc.'s quotes are not firm based upon direct communication from that market or dissemination of a message indicating the quotes are not firm or (ii) a national securities exchange or the Nasdaq Stock Market, Inc. has directly communicated or otherwise confirmed that it is experiencing systems or other problems affecting the reliability of its disseminated quotes.*

(6) No Change.

(7) **No Bid Series.** Electronic transactions in series quoted no bid [at a nickel (i.e., \$0.05 offer)] will be cancelled provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid [at a nickel] at the time of execution.

(8) *Transactions Executed Outside of Trading Hours.* All index options transactions that occur outside of the trading hours of the Exchange will be canceled if it is determined by the Trading Officials that the transaction occurred outside of the Exchange's trading hours, except as set forth in Commentary .02 to Amex Rule 1.

(b) through (e). No Change

Commentary

.01 through .02. No Change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange's equity option obvious error rules, Amex Rules 936 and 936—ANTE, and index option obvious error rules, Amex Rules 936C and 936C—ANTE (the "Obvious Error Rules") establish guidelines for the adjustment and cancellation of transactions in equity and index options. The purpose of this proposed rule change is to (i) amend the definition of "Theoretical Price"<sup>6</sup> and "Fair Market Value"<sup>7</sup> in connection with determining whether an equity or index option obvious price error has occurred as established in Amex Rules 936(a)(1) and 936(a)(1)—ANTE (equity), and Amex Rules 936C(a)(1) and 936C(a)(1)—ANTE (index), respectively; (ii) amend Amex Rules 936C(a)(1)(i) and 936C(a)(1)(i)—ANTE to clarify how Fair Market Value is determined in connection with single-listed index options and opening transactions; (iii) amend the Obvious Error Rules relating to erroneous quote(s) in the underlying security to permit the cancellation/adjustment of an option transaction when an exchange declares its quotes non-firm or otherwise communicates to the Amex that its quotes are unreliable; (iv) add an additional type of qualifying transaction entitled "Transactions Executed Outside of Trading Hours"; (v) amend how obvious price errors based on "verifiable disruptions or malfunctions of Exchange systems" are adjusted or cancelled; and (vi) revise the Obvious Error Rules to amend the terms of cancellations for "no bid series."

<sup>6</sup> "Theoretical Price" of an option series is, for series traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option class in the previous two calendar months. If there are no quotes for comparison, designated Trading Officials will determine the Theoretical Price. For transactions occurring as part of an opening, the Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

<sup>7</sup> "Fair Market Value" of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, Fair Market Value shall be determined by Trading Officials. For singly-listed issues, Fair Market Value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). For transactions occurring as part of an opening, the Fair Market Value shall also be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

**Obvious Price Error**

Under the Obvious Error Rules, an obvious price error is one of several enumerated types of transactions that qualify as an obvious error and are accordingly subject to adjustment or cancellation.

*Equity Options*

Amex Rules 936(a)(1) and 936(a)(1)—ANTE provide that an obvious pricing error will be deemed to have occurred when the execution price of an electronic transaction (not open outcry) varies from the Theoretical Price by a requisite amount.<sup>8</sup> For multiply-traded options, the Theoretical Price is the last bid (offer) price with respect to an erroneous sell (buy) transaction just prior to the trade that is disseminated by the competing options exchange with the most liquidity in that class over the preceding two (2) calendar months. If there are no quotes for comparison purposes, then trading officials will determine the Theoretical Price. For transactions occurring as part of an opening, the Theoretical Price is the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). When an obvious price error occurs, the Amex either will adjust or cancel the transaction pursuant to Amex Rules 936(a)(1)(i) and 936(a)(1)(i)—ANTE.

*Index Options*

Amex Rules 936C(a)(1) and 936C(a)(1)—ANTE provide that an obvious pricing error will be deemed to have occurred when the execution price of an electronic transaction (not open outcry) varies from the Fair Market Value by a prescribed amount.<sup>9</sup> For multiply-traded options, the Fair Market Value is the midpoint of the national best bid for erroneous sell transactions or national best offer for erroneous buy transactions. If there are no quotes for comparison purposes, then trading officials will determine the Fair Market Value. For both single-listed options

<sup>8</sup> The requisite amount is: \$0.25 for options below \$2; \$0.40 for options priced from \$2 to \$5; \$0.50 for options priced above \$5 to \$10; \$0.80 for options priced above \$10 to \$20; and \$1.00 for options priced above \$20.

<sup>9</sup> For index options series trading with normal bid-ask differentials as established in Rule 958(c), the prescribed amount shall be: (a) The greater of \$0.10 or 10% for index options trading under \$2.50; (b) 10% for index options trading at or above \$2.50 and under \$5; or (c) \$0.50 for index options trading at \$5 or higher. For index options series trading with bid-ask differentials that are greater than the widths established in Rule 958(c), the prescribed error amount shall be: (a) The greater of \$0.20 or 20% for index options trading under \$2.50; (b) 20% for index options trading at or above \$2.50 and under \$5; or (c) \$1.00 for index options trading at \$5 or higher.

and transactions occurring as part of an opening, Fair Market Value is the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). The Exchange proposes to revise the rule text accordingly to clarify that the Fair Market Value is the midpoint of the first non-erroneous quote. When an obvious price error occurs, the Amex either will adjust or cancel the transaction pursuant to Amex Rules 936C(c) and 936C(c)—ANTE.

Since the implementation of the Obvious Error Rules, there have occasionally been options transactions effected on the Exchange that were executed at prices that appeared to be "obvious price errors" but could not be cancelled or adjusted under existing rules. For example, in connection with an equity option, following dissemination of an erroneous quotation by the Amex, the competing options exchange with the most liquidity in the option class in question during the previous two (2) calendar months widened its quote to incorporate the Amex quote. As a result, although the price of the Amex transaction was "erroneous" (i.e. based on an erroneous quote), it was not "erroneous" pursuant to Amex Rules 936 and 936—ANTE in that the Theoretical Price was based on the "widened quotes" disseminated by the competing options exchanges. As a result, the Exchange believes that an amendment to the definition of Theoretical Price (and Fair Market Value for index options) is appropriate so that the bids and offers of an options exchange experiencing obvious price errors or erroneous quotes are not indirectly used as the basis for the Theoretical Price (and Fair Market Value). The Exchange believes that the use of quotes that are deemed to be "erroneous" as a basis for the Theoretical Price (equity) and Fair Market Value (indexes) is not proper and is inconsistent with the role and purpose of the Obvious Error Rules.

*Widened Quotes*

The proposal is intended to correct circumstances in the Obvious Error Rules where the Amex posts an erroneous quote and subsequently a competing options exchange, in direct response to the erroneous quote, widens its quote to incorporate the prior erroneous quote of the Amex. For example, the current market for an option is established by the Chicago Board Options Exchange, Inc. ("CBOE") to be 1.65 bid/1.90 offer. The Amex then quotes 0 bid/.25 offer for the option. The CBOE immediately posts a market to incorporate the Amex quote such as .20

bid/1.90 offer. An order to buy is then executed on the Amex at the offer price of \$0.25. The Amex then corrects the quote to 1.65 bid/1.90 offer with the CBOE following suit at 1.65 bid/1.90 offer. The Exchange believes for purposes of determining Theoretical Price in connection with the equity options (Amex Rules 936(a)(1) and 936(a)(1)—ANTE) and Fair Market Value in connection with index options (Amex Rules 936C(a)(1) and 936C(a)(1)—ANTE) that erroneous quotes of a competing options exchange that incorporated an erroneous Amex quote (in this example, .20 bid/1.90 offer) should not be used.

The Exchange proposes a revision to its equity option obvious price error rules, Amex Rules 936(a)(1) and 936(a)(1)—ANTE, providing that in determining the Theoretical Price of an option the last bid (erroneous sell transaction) or last offer (erroneous buy transaction) of the competing options exchange with the most liquidity in that option class over the previous two calendar quarters will be excluded if such competing options exchange widens its quote to incorporate the prior erroneous quote of the Amex. As a result, the Exchange proposes that the Theoretical Price, under these circumstances, would be the last bid price (erroneous sell transaction) and the last offer price (erroneous buy transaction) just prior to the trade, disseminated by the competing options exchange with the next best liquidity. If there are no competing options exchanges left without an erroneous quote, the Theoretical Price would be the first quote of the competing options exchange that has the most liquidity in such option class over the previous two (2) calendar quarters after the transaction(s) in question that does not reflect the erroneous quote.

In connection with the index option obvious price error rules, the Exchange proposes that Fair Market Value will not include the national best bid price (erroneous sell transaction) or national best offer price (erroneous buy transaction) of a competing options exchange if such exchange widens its quotes to incorporate the prior erroneous quote of the Exchange. Accordingly, the Fair Market Value will be the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous quote.

#### **Erroneous Quote in Underlying Security**

As set forth in the Obvious Error Rules, a trade resulting from an erroneous quote in the underlying security may be adjusted or cancelled.

However, pursuant to these Rules, a quote from an exchange in an underlying security that is declared “erroneous” by that exchange may not qualify for cancellation or adjustment.<sup>10</sup> Therefore, the Exchange proposes to amend Amex Rules 936(a)(5), 936(a)(5)—ANTE, 936C(a)(5) and 936C(a)(5)—ANTE so that when an exchange for an underlying security or Nasdaq if the underlying security trades on Nasdaq declares its quote(s) “non-firm” or when an exchange or Nasdaq communicates to the Amex that it is experiencing systems or other problems affecting the reliability of its disseminated quotes, a trade resulting from such “erroneous” underlying quote could be cancelled or adjusted. In order for a trade to be cancelled or adjusted, the Exchange would have to have proper documentation of that market’s non-firm declaration or notification of unreliable quotes, as applicable.

#### **Transactions Executed Outside of Trading Hours**

The Exchange further proposes that any equity options or index options transaction that occurs outside normal trading hours (currently, 9:30 a.m. until 4:02 p.m. Eastern time (“ET”) for equity options and 9:30 a.m. until 4:15 p.m. ET for broad-based index options and options on select Exchange-Traded Fund Shares) would be cancelled if the Trading Officials determine that the transaction took place outside of Amex trading hours, except as set forth in Commentary .02 to Amex Rule 1.

Amex Rule 1 sets forth the hours of business at the Exchange. Commentary .02 to Rule 1 provides that no option series may freely trade after 4:02 p.m. ET except that broad stock index group options and options on select Exchange-Traded Fund Shares shall freely trade until 4:15 p.m. ET each business day. Three (3) exceptions to the general rule are provided in Commentary .02 so that a trading rotation in any class of options may be effected even though the transaction will occur after 4:02 p.m. as follows: (i) Trading in the underlying security opens or re-opens after 3:30

p.m. ET; (ii) such rotation was initiated due to unusual market conditions pursuant to Rule 918 and notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. whichever is earlier or notice of such rotation is publicly disseminated after 4:00 p.m. and the rotation does not commence until five (5) minutes after news of such rotation is publicly disseminated; or (iii) for option classes trading on ANTE, an automated trading rotation is held at the close of trading as soon as practicable after 4:02 p.m. ET. Accordingly, equity options and index options transactions would be cancelled if the Trading Officials determine that the transaction occurred outside of the Amex trading hours.

#### **Verifiable Disruptions or Malfunctions of Exchange Systems**

In connection with transactions arising out of “verifiable disruptions or malfunctions of Exchange systems,” the Obvious Error Rules provide that those transactions that qualify for price adjustment will be adjusted to the Theoretical Price for equity options or Fair Market Value for index options. The Exchange submits that unintended results may occur due to the manner in which price adjustments are handled during these circumstances. Accordingly, the Exchange proposes that unless the parties agree to a price adjustment, the transaction would be cancelled. This new standard would replace the current price adjustment to the Theoretical Price for equity options or Fair Market Value for index options and clarify that the transaction will be cancelled if a price adjustment is not agreed to.

An example of such unintended consequences is set forth below. The current market for a particular equity call option is established by the Amex at 1.15 bid/1.30 offer. The underlying security subsequently increases in price. The other options exchanges (excluding the Amex) change their quote so that the market is now 1.20 bid/1.35 offer. The Amex due to a systems problem does not change its quote and remains at 1.15 bid/1.30 offer. The underlying security continues to increase in price. The other options exchanges now post a market of 1.25 bid/1.40 offer. The Amex remains at 1.15 bid/1.30 offer. An order to buy is executed on the Amex at 1.30. As defined by the current Rule, the Theoretical Price for this option is 1.25 so that in adjusting the price the specialist would be disadvantaged by the adjustment to 1.25 compared to the selling price of 1.30 (when the market was actually 1.40). Under the proposal,

<sup>10</sup> The Obvious Error Rules define an erroneous quote as a quote that occurs when the underlying security has a width of at least \$1.00 and a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Amex Rule 900(b)(26) and Rule 900(b)(26)—ANTE) during the time period encompassing two minutes before and after the dissemination of such quote. The average quote width is determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing the number of quotes during such time period (excluding the quote in question).

unless the parties agreed to an adjustment, the transaction would be cancelled.

### No Bid Series

Under the current Obvious Error Rules "no bid provisions," electronic transactions in option series quoted no bid at a nickel (i.e. \$0.05 offer) will be cancelled provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at a nickel at the time of execution. A "no bid" option refers to an option where the bid price is \$0.00.<sup>11</sup> Series of options quoted no bid are typically deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. For this reason, relatively few transactions occur in these series and those that do are usually the result of a momentary pricing error. In some cases, the pricing error is substantial enough such that the other provisions in the equity and index options obvious error rules become applicable. However, in many cases, the no bid provisions are the only provisions that would apply to the pricing error.

The proposal seeks to revise the no bid provision in the Obvious Error Rules that provide that the option series must be quoted no bid at a nickel and instead only require that the option series be quoted no bid. The reason for this change is that options that are priced at no bid, regardless of the offer, are typically deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. This is especially the case when the series below (for calls) or above (for puts) in the same option class similar is quoted no bid. In this regard, the offer price is irrelevant. Therefore, transactions in series that are quoted no bid at a dime, for example, are just as likely to be the result of an obvious error as are transactions in series that are quoted no bid at a nickel when the series below (for calls) or above (for puts) in the same option class similarly is quoted no bid.

### 2. Statutory Basis

The Amex represents that the filing provides objective guidelines for the nullification or adjustment of transactions executed at clearly erroneous prices. Moreover, the proposed rule provides uniformity regarding obvious pricing errors, which will serve to benefit customers. For these reasons, the Exchange believes the proposal is consistent with Section 6(b)

of the Act<sup>12</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> 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.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-060 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-2005-060. 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-2005-060 and should be submitted on or before November 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-22164 Filed 11-7-05; 8:45 am]  
BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.  
**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before December 8, 2005. If you intend to comment but cannot prepare comments

<sup>11</sup> When the bid price is \$0.00, the offer price is typically \$0.05. In this instance, the option typically is referred to as "no bid at a nickel."

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and

*David\_Rostker@omb.eop.gov*, fax number 202-395-7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205-7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* "8(a) Annual Update".  
*Form No:* 1450.

*Frequency:* On Occasion.

*Description of Respondents:* 8(a)

Program Participants.

*Annual Responses:* 7,258.

*Annual Burden:* 14,516.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 05-22171 Filed 11-7-05; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #10222 and #10223]

**Florida Disaster Number FL-00011**

**AGENCY:** Small Business Administration

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-1609-DR), dated 10/24/2005.

*Incident:* Hurricane Wilma.

*Incident Period:* 10/23/2005 and continuing.

*Effective Date:* 10/30/2005.

*Physical Loan Application Deadline Date:* 12/23/2005.

*EIDL Loan Application Deadline Date:* 07/24/2006.

**ADDRESSES:** Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration

for the State of Florida, dated 10/24/2005 is hereby amended to include the following areas as adversely affected by the disaster:

**Primary Counties:**

Brevard, Indian River, and Okeechobee.

**Contiguous Counties:**

Florida: Orange, Osceola, Polk, Seminole, and Volusia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 05-22169 Filed 11-7-05; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #10178 and #10179]

**Mississippi Disaster Number MS-00005**

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-1604-DR), dated 08/29/2005.

*Incident:* Hurricane Katrina.

*Incident Period:* 08/29/2005 through 10/14/2005.

*Effective Date:* 10/27/2005.

*Physical Loan Application Deadline Date:* 01/11/2006.

*EIDL Loan Application Deadline Date:* 05/29/2006.

**ADDRESSES:** Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Mississippi, dated 08/29/2005 is hereby amended to include the following areas as adversely affected by the disaster:

**Primary Counties:**

Holmes and Humphreys.

**Contiguous Counties:**

Mississippi: Leflore, Sunflower, and Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 05-22170 Filed 11-7-05; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**Audit and Financial Management Advisory (AFMAC) Committee Meeting**

The U.S. Small Business Administration, Audit and Financial Management Advisory Committee (AFMAC) will host a public meeting on Wednesday, November 9, 2005. The meeting will take place at the U.S. Small Business Administration, 409 3rd Street, SW., Office of Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416. The AFMAC was established by the Administrator of the SBA to provide recommendation and advice regarding the Agency's financial management including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

Anyone wishing to attend must contact Thomas Dumaresq in writing or by fax. Thomas Dumaresq, Chief Financial Officer, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205-5406, fax: (202) 205-6869, e-mail: *thomas.dumaresq@sba.gov*.

**Matthew K. Becker,**

*Committee Management Officer.*

[FR Doc. 05-22168 Filed 11-7-05; 8:45 am]

**BILLING CODE 8025-01-M**

**DEPARTMENT OF STATE**

[Delegation of Authority 285]

**Delegation by the Deputy Secretary to the Director and the Deputy Director of the Office of Foreign Missions of Authority Regarding Certification Under the Internal Revenue Code**

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and delegated to the Deputy Secretary of State pursuant to Delegation of Authority 245 of April 23, 2001, I hereby delegate to the Director and Deputy Director of the Office of Foreign Missions the certification function vested in the Secretary of State by 26 U.S.C. 893(b) (section 893(b) of the Internal Revenue Code regarding the "Compensation of employees of foreign governments or organizations").

Any function covered by this delegation may also be exercised by the Secretary of State, the Deputy Secretary of State or the Under Secretary for Management.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedures as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: October 31, 2005.

**Robert B. Zoellick,**

*Deputy Secretary of State, Department of State.*

[FR Doc. 05-22240 Filed 11-7-05; 8:45 am]

BILLING CODE 4710-10-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Circular Welded Non-Alloy Steel Pipe From the People's Republic of China

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of proposed measure; request for comments.

**SUMMARY:** The United States International Trade Commission (ITC) has determined, pursuant to section 421(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2451(b)(1)), that circular welded non-alloy steel pipe<sup>1</sup> from the People's

<sup>1</sup> For purposes of its investigation, the ITC considered circular welded non-alloy steel pipe to include certain welded carbon quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe (and they may also be referred to as structural or mechanical tubing). The term carbon quality steel may include certain low alloy steel imported as other alloy steel pipes and tubes. Products not included in this investigation are mechanical tubing (whether or not cold-drawn) provided for in HTS subheading 7306.30.50, tube and pipe hollows for redrawing provided for in HTS 7306.30.5035, or finished electrical conduit provided for in HTS 7306.30.5028. API line pipe used in oil or gas applications requiring API certifications is also not included in this investigation. Similarly, pipe produced to the API specifications for oil country tubular goods use are not included in this investigation. The subject imported products are currently provided for in the Harmonized Tariff Schedule of the United States (HTS) subheadings 7306.30.10 and 7306.30.50. Specifically, the various HTS statistical reporting

Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. Pursuant to section 421(h)(1) of the Trade Act, the United States Trade Representative (USTR) is publishing notice of proposed restrictions with respect to imports of the subject circular welded non-alloy steel pipe from China. USTR invites domestic producers, importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed restrictions and whether they would be in the public interest. USTR also invites interested parties to participate in a public hearing (if requested).

**DATES:** Requests for USTR to hold a public hearing are due by November 16, 2005. Written comments and requests to testify at any public hearing are due by November 18, 2005. If a request for USTR to hold a public hearing is received, the hearing will be held on November 29, 2005.

**ADDRESSES:** Submissions by electronic mail: [FR0601@ustr.eop.gov](mailto:FR0601@ustr.eop.gov). Submissions by facsimile: Sandy McKinzy, USTR, at (202) 395-9672.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments and holding of a public hearing, contact Sandy McKinzy, USTR, telephone (202) 395-9483, facsimile (202) 395-9672. Other questions regarding the subject of this notice should be addressed to Terrence J. McCartin, Office of China Affairs, USTR, telephone (202) 395-3900, or Stephen Kho, Office of General Counsel, USTR, telephone (202) 395-7305.

#### SUPPLEMENTARY INFORMATION:

##### 1. The ITC Investigation and Section 421

Following receipt of a petition filed on August 2, 2005, on behalf of Allied Tube and Conduit Corp., IPSCO Tubulars, Inc., Maruichi American Corp., Maverick Tube Corp., Sharon Tube Co., Western Tube Conduit Corp., Wheatland Tube Co., and the United Steelworkers of America, AFL-CIO, the ITC instituted investigation No. TA-421-6, under section 421 of the Trade Act (19 U.S.C. 2451) to determine whether the subject circular welded non-alloy steel pipe from China are being imported into the United States in

numbers under which the subject standard pipe has been provided for since January 1, 1992, are as follows: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090.

such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The ITC made an affirmative market disruption determination on October 3, 2005, and transmitted a report on its determination, as well as its remedy proposals, to USTR on October 21, 2005. The views of the ITC, including its remedy proposals, and the ITC staff report are available on the ITC's Web site ([http://hotdocs.usitc.gov/docs/pubs/701\\_731/pub3807.PDF](http://hotdocs.usitc.gov/docs/pubs/701_731/pub3807.PDF)) and are contained in USITC Publication 3807 (October 2005), entitled "Circular Welded Non-alloy Steel Pipe from China". A copy of that publication can be obtained from the ITC by faxing a request to (202) 205-2104 or calling (202) 205-1809.

Following an affirmative determination by the ITC, and pursuant to section 421(h) of the Trade Act, USTR is required to make a recommendation to the President concerning what action, if any, to take to remedy the market disruption. Within 15 days after receipt of USTR's recommendation, the President is required to provide import relief unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States. (Section 421(k).) Prior to making a recommendation, USTR is required to publish notice of any proposed measures and of the opportunity to comment.

##### 2. Proposed Measure and Opportunity for Comment

Two of the four ITC commissioners entitled to vote on remedy recommended that the President impose an annual quota of 160,000 short tons on imports of circular welded non-alloy steel pipe from China for a period of three years. The other two ITC commissioners recommended that the President impose a tariff-rate quota on imports of the subject circular welded non-alloy steel pipe from China for a three-year period as follows: a 25 percent tariff, in addition to the current rate of duty, on imports exceeding 267,468 short tons in the first year, with this quota level increasing by 5 percent in the second year and 10 percent in the third year. All four ITC commissioners further recommended that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject

imports. USTR proposes these remedies for further consideration by domestic producers, importers, exporters, and other interested parties, and invites any of these parties to submit their views and evidence on the appropriateness of the proposed remedies and whether they would be in the public interest. In addition, USTR invites comments on other possible actions, including: imposition of a tariff-rate quota on the subject imports from China, with an in-quota volume, out-of-quota tariff rate, and/or periods different from the ITC recommendation; imposition of an additional duty on imports of the subject imports from China; imposition of a quota on the subject imports from China, with a different quota level; an import monitoring mechanism; or no import relief (pursuant to a determination under section 421(k) of the Trade Act regarding the national economic interest or national security). In commenting on possible actions, interested parties are requested to address: (i) The short- and long-term effects that implementation of the proposed actions are likely to have on the domestic circular welded non-alloy steel pipe industry, other domestic industries, and downstream consumers, and (ii) the short- and long-term effects that not taking the proposed actions are likely to have on the domestic circular welded non-alloy steel pipe industry, its workers, and other domestic industries or communities.

An interested party may request that USTR hold a public hearing, which request must be received by November 16, 2005. Written comments, as well as requests to testify at any public hearing, must be received by November 18, 2005, and should be submitted in accordance with the instructions below. Parties that have requested to testify at any public hearing will be informed if a hearing is to be held. In addition, information on any public hearing may be obtained by contacting Sandy McKinzy at (202) 395-9483. If a public hearing is requested, it will be held on November 29, 2005, at 9:30 a.m. in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented.

### 3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "Circular Welded Non-alloy Steel Pipe" followed by (as appropriate) "Written Comments", "Request for Public Hearing", or "Request to Testify". Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries will be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395-6186.

**David Weller,**

*Deputy Assistant United States Trade Representative for China Affairs.*

[FR Doc. 05-22161 Filed 11-7-05; 8:45 am]

**BILLING CODE 3910-W6-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Availability and Request for Comments; Extension of Comment Period for Enhanced Airworthiness Program for Airplane Systems Advisory Circulars

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**SUMMARY:** This action extends the comment period for the 12 draft advisory circulars (ACs) related to the Enhanced Airworthiness Program for Airplane Systems proposed rule, which was published on October 6, 2005. The 12 Notices of availability for the draft ACs include an earlier close of comment period date than the proposed rule. The purpose of this action is to make the close of comment period date for the 12 draft ACs and the proposed rule the same.

**DATES:** Comments must be received on or before February 3, 2006.

**ADDRESSES:** Send all comments on the proposed ACs, except for AC 25-XX to: Federal Aviation Administration, Attention: Stephen Slotte, ANM-111, Airplane & Flight Crew Interface, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (425) 227-2315; facsimile (425) 227-1320, e-mail [steve.slotte@faa.gov](mailto:steve.slotte@faa.gov). Send comments on proposed AC 25-XX to: Federal Aviation Administration, Attention: Mike Zielinski, Manager, ANM-105, AFS Liaison Program, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (425) 227-2279; facsimile (425) 227-1100, e-mail [mike.zielinski@faa.gov](mailto:mike.zielinski@faa.gov). Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Annette Kovite, Transport Standards Staff, at the address under the **ADDRESS** heading, telephone (425) 227-1262.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite interested persons to comment on the proposed ACs by sending such written data, views, or arguments, as you may desire. Commenters should identify each AC that your comments apply to. Also, you should send your comments in duplicate to the address specified above.

The FAA will consider all communications received on or before the closing date for comments before issuing the final ACs. You can find and download each of the 12 proposed ACs, at <http://www.airweb.faa.gov/rgl> under

“Draft Advisory Circulars.” A paper copy of the proposed ACs may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

#### Discussion

On October 6, 2005, the FAA published in the **Federal Register** the Notices of availability for 11 of the 12 ACs related to the “Enhanced Airworthiness Program for Airplane Systems” proposed rule. The close of comment period date for these notices is December 5, 2005. The FAA published the Notice of availability for the twelfth AC, AC 120-XX, in the **Federal Register** on October 18, 2005. The close of comment period date for this AC is December 19, 2005. The proposed rule (70 FR 58508), which also was published on October 6, 2005, contains a close of comment period date of February 3, 2006. The FAA’s intent was to have the same close of comment period date for the draft ACs and proposed rule.

The following is a list of the draft ACs in question that are open for comment, and the **Federal Register** citations for the Notices of availability, which give information about the subject matter the ACs address:

- AC 25-XX—Subpart I, Continued Airworthiness and Safety Improvements (70 FR 58567)
- AC 25-YY—Development of Standard Wiring Practices Documentation (70 FR 58562)
- AC 25.1353-1—Electrical Equipment and Installations (70 FR 58564)
- AC 25.1357-1X—Circuit Protective Devices (70 FR 58565)
- AC 25.1360-1X—Protection Against Injury (70 FR 58565)
- AC 25.1362-1X—Electrical Supplies for Emergency Conditions (70 FR 58566)
- AC 25.1365-1X—Electrical Appliances, Motors, and Transformers (70 FR 58566)
- AC 25.17XX—Certification of Electrical Wiring Interconnection Systems on Transport Category Airplanes (70 FR 58562)
- AC 25.869-1—Fire Protection Systems (70 FR 58563)
- AC 25.899-1—Electrical Bonding and Protection Against Static Electricity (70 FR 58564)
- AC 120-YY—Aircraft Electrical Wiring Interconnection Systems Training Program (70 FR 58563)
- AC 120-XX—Program to Enhance Transport Category Airplane Electrical Wiring Interconnection System Maintenance (70 FR 60597)

With this action, the FAA extends the comment period for each of the 12 draft

ACs to February 3, 2006 to coincide with the comment period for the EAPAS proposed rule.

Issued in Washington, DC on November 1, 2005.

**James J. Ballough,**

*Director, Flight Standards Service, Aviation Safety.*

**John J. Hickey,**

*Director, Flight Standards Service, Aviation Safety.*

[FR Doc. 05-22250 Filed 11-7-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket Nos. **FMCSA-99-5578, FMCSA-99-5748, FMCSA-2000-7363, FMCSA-2000-8398, FMCSA-2003-14223, FMCSA-2003-15892**]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** This notice publishes FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. FMCSA has statutory authority to exempt individuals from the vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting the renewal of these exemptions will continue to provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective November 30, 2005. Comments from interested persons should be submitted by December 8, 2005.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Numbers FMCSA-99-5578, FMCSA-99-5748, FMCSA-2000-7363, FMCSA-2000-8398, FMCSA-2003-14223, FMCSA-2003-15892 by any of the following methods:

- 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 numbers 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>.

#### Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from

the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 22 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Terry J. Aldridge  
 Jerry D. Bridges  
 Roosevelt Bryant, Jr.  
 Thomas P. Cummings  
 Ralph E. Eckels  
 Marion R. Fox, Jr.  
 Gary R. Gutschow  
 Richard J. Hanna  
 James J. Hewitt  
 Carl M. Hill  
 John K. Love  
 Albert E. Malley  
 Roger J. Mason  
 David L. Menken  
 Richard L. Messinger  
 Eldon Miles  
 Rodney M. Mimbs  
 Walter F. Moniowczak  
 Ronald L. Roy  
 Thomas E. Walsh  
 Kevin P. Weinhold  
 Thomas A. Wise

These exemptions are renewed subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has

resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

#### Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 22 applicants has satisfied the eligibility requirements for obtaining an exemption from the vision standard (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 54775; 64 FR 68195; 65 FR 20251; 67 FR 17102; 65 FR 45817; 65 FR 77066; 68 FR 1654; 66 FR 17743; 66 FR 33990; 66 FR 30502; 66 FR 41654; 67 FR 68719; 68 FR 2629; 68 FR 10301; 68 FR 19596; 68 FR 52811; 68 FR 61860). Each of these 22 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

#### Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 8, 2005.

In the past FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary

statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). FMCSA continues to find its exemption process consistent with the statutory and regulatory requirements.

Issued on: November 3, 2005.

**Rose A. McMurray**,  
 Associate Administrator, Policy and Program Development.

[FR Doc. 05-22263 Filed 11-7-05; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9800]

#### Qualification of Drivers; Eligibility Criteria and Applications; Diabetes Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of revised final disposition.

**SUMMARY:** This notice announces FMCSA's decision to revise the terms and conditions of its previous decision to issue exemptions to certain insulin-treated diabetic drivers of commercial motor vehicles (CMVs) from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). This action is in response to section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) which requires FMCSA within 90 days of enactment to modify its exemption program to allow individuals who use insulin to treat diabetes mellitus to operate CMVs in interstate commerce, without having to demonstrate safe driving experience operating a CMV while using insulin, while at the same time implementing certain other requirements contained in section 4129. These changes will remain in effect until FMCSA completes a rulemaking to revise the FMCSRs to allow drivers with insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce in accordance with the applicable statutory standards.

**DATES:** This notice is effective on November 8, 2005. FMCSA will begin accepting applications for exemptions under the new criteria on November 8, 2005.

**ADDRESSES:** Drivers with insulin-treated diabetes mellitus (ITDM) who meet the modified criteria contained in this notice may now request an exemption from 49 CFR 391.41(b)(3) by sending an exemption application request to: Federal Diabetes Exemption Program (MC-PSP), Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, calling 703-448-3094, or faxing a request to 703-448-3077.

You may submit comments on the limited issue of the *information collection burden* in this notice. FMCSA must receive your *information collection burden* comments by January 9, 2006. You may submit *information collection burden* comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA-2001-9800. Please also note the paragraph under the subheading Privacy Act later in this notice about how your comments will be available to the public.

- 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.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number for this notice. 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:

##### Background

FMCSA established the current physical qualification standard for drivers with ITDM in 1970 because several risk studies indicated that such drivers had a higher rate of accident involvement than the general population. The standard states that: "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control." 49 CFR 391.41(b)(3).

Since 1970, the agency has considered the diabetes requirement and undertaken studies to determine if its diabetes standard for commercial drivers in interstate commerce should be amended. It is FMCSA's view that its physical qualification standards should be based on sound medical, scientific and technological grounds, and that individual determinations should be made to the maximum extent possible consistent with FMCSA's responsibility to ensure safety on the Nation's highways. FMCSA discussed the regulatory history and research activity addressing the issue of diabetes and CMV operation in a prior notice in this proceeding. 66 FR 39548, 39549 (July 31, 2001)

In 1998, section 4018 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 413-4 (TEA-21) (set out as a note to 49 U.S.C. 31305) directed the Secretary of Transportation (the Secretary) to determine if it is feasible to develop "a practicable and cost-effective screening, operating and monitoring protocol" for allowing drivers with ITDM to operate CMVs in interstate commerce "that would ensure a level of safety equal to or greater than that achieved with the current prohibition on individuals with insulin treated diabetes mellitus driving such vehicles." As directed by section 4018, the agency compiled and evaluated the available research and information. It assembled a panel of medical experts in the treatment of diabetes to investigate and report on the issues concerned with the treatment, medical screening and monitoring of ITDM individuals in the context of operating CMVs. FMCSA then submitted to Congress in July 2000 a report entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate

Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century," (TEA-21 Report to Congress). It concluded that it is feasible to establish a safe and practicable protocol with three components that would allow some drivers with ITDM to operate CMVs. The three components included screening of qualified drivers, operational requirements to ensure proper disease management by such drivers, and monitoring of safe driving behavior and proper disease management (refer to pages 64-65). For a detailed discussion of the report's findings and conclusions, refer to the prior notice in this proceeding. 66 FR 39548, 39549-51 (July 31, 2001). The TEA-21 Report to Congress can be accessed in docket FMCSA-2001-9800, item 87, in the DOT Docket Management System at: <http://dmses.dot.gov/docimages/p64/139973.tif>; [http://dmses.dot.gov/docimages/pdf71/139973\\_web.pdf](http://dmses.dot.gov/docimages/pdf71/139973_web.pdf); or on FMCSA's Web site at: <http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreports.htm>.

As a result of the conclusions found in the TEA-21 Report to Congress, in 2001, FMCSA proposed to implement those conclusions and recommendations by issuing exemptions from the FMCSRs to allow operations of CMVs by drivers treating their diabetes mellitus with insulin. After receiving and considering comments on the proposed use of exemptions to implement the TEA-21 Report to Congress, in 2003, FMCSA issued a Notice of Final Disposition establishing the procedures and protocols for implementing the exemptions. 68 FR 52441 (September 3, 2003) ("2003 Notice"). In order to obtain an exemption, a CMV driver with ITDM must follow the basic requirements for obtaining an exemption set out in 49 CFR part 381, subpart C. FMCSA may not grant an exemption unless it would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. 49 U.S.C. 31315 and 49 CFR 381.305(a). This is the same basic standard applicable to the determination under TEA-21 section 4018(a) of a protocol for CMV drivers with ITDM. Relying on the legislative history of this section,<sup>1</sup> FMCSA previously stated that the level of safety would be equivalent if there is a reasonable expectation that safety will not be compromised if an exemption is

<sup>1</sup> Added by section 4007 of Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 401 (June 9, 1998).

granted. Federal Motor Carrier Safety Regulations; Waivers, Exemptions and Pilot Programs, 69 FR 51589, 51592 (Aug. 20, 2004). *See also* House Conf. Report 105-550 (May 22, 1998) at 489.

In conformity with the conclusions of the TEA-21 Report to Congress, the 2003 Notice implemented, with a few modifications, the three components of the protocol recommended in the report, to allow drivers with ITDM to be qualified with an exemption from the FMCSRs to operate CMVs (refer to pages 65-69). Notice of the grant of the first such exemptions to four drivers who use insulin to treat their diabetes was published on September 2, 2005. 70 FR 52465.

### **Safe, Accountable, Flexible, Efficient Transportation Equity Act**

Section 4129 of SAFETEA-LU, Public Law 109-59, 119 Stat. 1144, 1742-43 (Aug. 10, 2005) requires the Secretary to begin, within 90 days of enactment, to revise the 2003 Notice to allow drivers who use insulin to treat diabetes to operate CMVs in interstate commerce.<sup>2</sup> The revision must provide for individual assessment of diabetic mellitus drivers, and be consistent with the criteria described in section 4018 of TEA-21, discussed above.

Section 4129 requires two substantive changes to be made in the current exemption process set out in the 2003 Notice. As required by section 4129(b)-(c), the changes are: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In order to accomplish these changes within the 90-day time frame established by section 4129, FMCSA will make immediate revisions to the current diabetes exemption program established by the 2003 Notice. These revisions are those that are necessary to respond to the specific changes mandated by section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the necessary level of safety as also required by section 4129(a). The revisions will include: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) definition of stable control, using the TEA-21 Report to Congress. Both of those

changes are discussed in more detail below.

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concludes that all of the operating, monitoring and medical requirements set out in the 2003 Notice, except as modified here, are in compliance with section 4129(d). All of the requirements set out in the 2003 Notice, except as modified here, will remain in effect.

These changes to the exemption program will be effective upon publication of this Notice in the **Federal Register**. FMCSA is also commencing the process for considering revisions to the current physical qualification standards for drivers with ITDM, and will be issuing an Advance Notice of Proposed Rulemaking (ANPRM) in the near future. Interested parties are urged to submit comments on this Notice and its implementation of the statutory directives in their comments in response to FMCSA's upcoming ANPRM.

### **Revisions to the Exemption Eligibility Criteria**

#### *Driving Experience While Using Insulin*

The TEA-21 Report to Congress states that a necessary component of the feasible program should be screening of qualified drivers. It is recommended that criteria for screening a driver with ITDM should include a review of driving experience and driving record to ensure that there was a level of safety present that did not compromise public safety.

Section 4129(b) of SAFETEA-LU requires the removal of using driving experience as screening criteria for approving or disapproving an exemption from the physical qualifications standards for drivers with ITDM operating a CMV while using insulin. Therefore, FMCSA will immediately discontinue use of the 3-year criterion for drivers with ITDM. Applications from drivers with ITDM will no longer be denied because the drivers do not have 3 years of experience operating CMVs, while using insulin. FMCSA will also no longer require submission of a driving record in order to determine exemption eligibility. The requirement for drivers with ITDM to provide proof of valid operator's license will remain in effect.

### *Definition of Stable Control and Minimum Period of Insulin Use*

Section 4129(c) of SAFETEA-LU requires drivers with ITDM to have a minimum period of insulin use to demonstrate stable control of diabetes before operating a CMV in interstate commerce, consistent with the findings of the expert medical panel reported in the TEA-21 Report to Congress. For individuals who have been newly diagnosed with Type 1 diabetes, the minimum period of insulin use may not exceed 2 months, unless directed by the treating physician. For individuals who have Type 2 diabetes and are converting to insulin use, the minimum period of insulin use may not exceed 1 month, unless directed by the treating physician.

The TEA-21 Report to Congress states that insulin treatment seems to pose a dilemma with respect to resolving the issue of allowing individuals with ITDM to operate CMVs in interstate commerce. From a positive standpoint, insulin therapy clearly improves the health of individuals who have diabetes mellitus, which should contribute to the safe operation of CMVs. Conversely, the use of insulin can cause the onset of hypoglycemia. Hypoglycemia, as some of the literature tends to argue, is seen as a serious risk factor in crash causation. If individuals with ITDM are to be allowed to operate CMVs in interstate commerce, the risk for hypoglycemia and procedures for controlling that risk cannot be ignored. Any process focused on allowing ITDM individuals to operate commercial vehicles must clearly have procedures for controlling that potential for risk and its influence on the level of safety (refer to pages 27-28).

The TEA-21 Report to Congress found that the primary means for determining whether a driver of a CMV with ITDM has stable control or proper disease management is to consider information on any recurrent hypoglycemic reactions experienced by the driver (refer to page 52). In addition to the evaluation of hypoglycemic reactions, the TEA-21 Report to Congress also found that the extreme values of glycosylated hemoglobin (HbA1C) may be evidence of unstable control and poor disease management. For drivers who exhibit proper disease management, HbA1C results can be combined with the results of blood glucose monitoring to obtain a better insight into individual diabetes management (refer to pages 52-53).

The 2003 Notice recognized the importance of using the HbA1C measurements as part of the evidence to

<sup>2</sup> Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule," but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

be submitted to demonstrate stable control of the driver's diabetes. In accordance with the standard clinical protocol, two measurements taken 90 days apart were required. No particular level for the measurement was specified. 68 FR 52443.

The American Diabetes Association (ADA) recommends the use of <7% as a normal HgA1C and recognizes that a more stringent level of <6% may be used at the discretion of the physician to reduce microvascular and neuropathic complications of diabetes. However, as discussed above, the TEA-21 Report to Congress suggests that this lower level may not be in the best interest of safety when related to a driver with ITDM operating a CMV, as it may cause hypoglycemic reactions in some individuals. Therefore, the Report to Congress suggests that the normal range as defined by the ADA is not the goal and that there is the assumption that a level exists above this normal range in which the driver with ITDM would not be at risk for hypoglycemia (refer to page 56). Several members of the expert medical panel involved in the TEA-21 Report to Congress thought that the HgA1C was only relevant at extreme values at the high end of the range at 10 or 11% (refer to page 57). In light of all these considerations, FMCSA has determined that the appropriate measure of HgA1C to demonstrate stable control of diabetes while using insulin is in the range of 7% and 10%.

Acceptable blood glucose ranges were also discussed in the TEA-21 Report to Congress, indicating that the acceptable range for blood glucose falls between 100 to 400 mg/dl (refer to page 58). The panel endorsed a protocol for monitoring glucose before and during the operation of a CMV. This protocol, including those elements relating to documentation of stable control of diabetes, such as a minimum period of insulin use, were incorporated into screening and monitoring components and are currently required by the 2003 Notice as part of the Federal diabetes exemption process (68 FR 52443-45).

The TEA-21 Report to Congress states that defining a period of insulin use depended on circumstances surrounding the history of diabetes that a driver include in the application process. It was also noted that drivers with Type 1 diabetes, with intrastate driving experience while using insulin, probably have a well established history of his/her diabetes and its treatment. Setting a period for insulin use, then, would be necessary mainly for drivers that have Type 2 diabetes or are newly diagnosed with either type. If the driver had Type 2 diabetes requiring insulin

use, the panel thought that a one-month period would be sufficient to provide adequate individual disease management skills. If the driver were a newly diagnosed patient with Type 1 diabetes, the panel was satisfied with a two month period. However, if the treating physician concluded that the patient needed adjustment in the insulin dose or had not adequately learned about diabetes and its management, the period could be extended to a third month or longer, depending on individual circumstances (refer to page 53). This is the specific criterion referred to in SAFETEA-LU section 4129(c).

Based on the TEA-21 Report to Congress under TEA-21 section 4018, and to ensure that exemptions from the diabetes program continue to achieve the requisite level of safety, FMCSA therefore continues to define stable control as specified in the 2003 Notice, with the exception that, FMCSA will no longer require the submission of two HgA1C results 90 days apart from driver with ITDM. FMCSA will now require submission with the application of only one HgA1C result within the range of  $\geq 7\%$  and  $\leq 10\%$  to meet the minimum period of insulin use requirements, as modified by section 4129(c). All other requirements related to hypoglycemic episodes, blood glucose levels, patient education, and definition of treating physician currently specified in the 2003 Notice, 68 FR 52443, will remain in effect.

#### *Changes in Application Information*

Interested applicants with ITDM seeking an exemption are no longer required to provide documentation to support driving experience, and will be required to submit only one instead of two HgA1C results as part of the Federal diabetes application.

#### **Conclusion**

FMCSA reviewed the monitoring protocol specified in the 2003 Notice and determined it to be adequate under section 4129 of SAFETEA-LU. Therefore, monitoring requirements will remain in effect as specified.

The agency has begun review of all previously denied applications for Federal diabetes exemptions. The agency has notified these individuals by letter that the 3-year criterion and driving record criterion were eliminated, and provided instructions for updating medical information previously submitted to the agency.

In addition to initiating the rulemaking referred to above to revise the FMCSRs to allow certain insulin-treated diabetic drivers to operate CMVs

in interstate commerce, FMCSA is currently evaluating the Federal medical exemption and certificate programs to identify areas for improvement. The agency is currently developing new web-based public education pages, as well as an on-line application system. Refer to the new FMCSA medical program page for additional information, <http://www.fmcsa.dot.gov/rules-regulations/topics/medical/medical.htm>.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

In the 2003 Notice, FMCSA estimated that approximately 700 applications for exemption would be filed annually, and that it would take an average of 90 minutes to complete an application, for a total burden of 1,050 hours. The number of applications actually filed has been substantially less. However, with the changes made in the exemption program by this revised Notice, the number of applications could increase substantially, and may approximate, at least initially, the level estimated in 2003. The amount of information to be collected for this exemption program has decreased because applicants with insulin treated diabetes mellitus would not have to provide information regarding their history of operating commercial motor vehicles while undergoing such treatment and the associated three-year driving record.

FMCSA determined there will be no change in the burden in the currently-approved information collection (OMB Control No. 2126-0006), titled "Medical Qualifications Requirements," which includes the diabetes exemption program as a result of the action in this notice. OMB approved the information collection on December 18, 2003. The approval will expire on December 31, 2006.

Interested parties are invited to send comments regarding any aspect of this information collection requirement, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the collected information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**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 (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Issued on: November 2, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05-22264 Filed 11-7-05; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 9, 2005 (70 FR 24462).

**DATES:** Comments must be submitted on or before December 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Lori Summers, the National Highway Traffic Safety Administration, Office of Rulemaking (NVS-112), (202) 366-4917, 400 Seventh Street, SW., Room 5320, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****National Highway Traffic Safety Administration**

*Title:* Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

*OMB Number:* 2127-0541.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* In order to ensure that manufacturers are complying with FMVSS and regulations, NHTSA

requires a number of information collections in FMVSS Nos. 108, 110, 202, 205, 208, 210, and 213, and Part 575 Sections 103 and 105.

FMVSS No. 108, "Lamps, reflective devices, and associated equipment." This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. Since the specific manner in which headlamp aim is to be performed is not regulated (only the performance of the device is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, to assure that headlamps can be correctly aimed, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

FMVSS No. 110, "Tire selection and rims." This standard specifies requirements for tire selection to prevent tire overloading. The vehicle's normal load and maximum load on the tire shall not be greater than applicable specified limits. The standard requires a permanently affixed vehicle placard specifying vehicle capacity weight, designated seating capacity, manufacturer recommended cold tire inflation pressure, and manufacturer's recommended tire size. The standard further specifies rim construction requirements, load limits of nonpneumatic spare tires, and labeling requirements for non-pneumatic spare tires, including a required placard. Owner's manual information is required for "Use of Spare Tire." FMVSS No. 110 will require additional owner's manual information on the revised vehicle placard and tire information label, on revised tire labeling, and on tire safety and load limits and terminology.

FMVSS No. 202, "Head restraints." This standard specifies requirements for head restraints. The standard, which seeks to reduce whiplash injuries in rear collisions, currently requires head restraints for front outboard designated seating positions in passenger cars and in light multipurpose passenger vehicles, trucks and buses. In a final rule published on December 14, 2004 (69 FR 74880), the standard requires that vehicle manufacturers include information in owner's manuals for vehicles manufactured on or after September 1, 2008. The owner's manual must clearly identify which seats are equipped with head restraints. If the

head restraints are removable, the owner's manual must provide instructions on how to remove the head restraint by a deliberate action distinct from any act necessary for adjustment, and how to reinstall head restraints. The owner's manual must warn that all head restraints must be reinstalled to properly protect vehicle occupants. Finally, the owner's manual must describe, in an easily understandable format, the adjustment of the head restraints and/or seat back to achieve appropriate head restraint position relative to the occupant's head.

FMVSS No. 205, "Glazing materials." This standard specifies requirement for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in a crash. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield, is required to be placed in the vehicle owner's manual.

FMVSS No. 208, "Occupant crash protection." This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers.

FMVSS No. 210, "Seat belt assembly anchorages." This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in a crash. The standard requires that manufacturers place the following information in the vehicle owner's manual:

- a. An explanation that child restraints are designed to be secured by means of the vehicle's seat belts, and,
- b. A statement alerting vehicle owners that children are always safer in the rear seat.

FMVSS No. 213, "Child restraint systems." This standard specifies requirements for child restraint systems and requires that manufacturers provide consumers with detailed information relating to child safety in air bag-equipped vehicles. The vehicle owner's

manual must include information about the operation and do's and don'ts of built-in child seats.

Part 575 Section 103, "Camper loading." This standard requires that manufacturers of slide-in campers designed to fit into the cargo bed of pickup trucks affix a label to each camper that contains information relating to certification, identification and proper loading, and to provide more detailed loading information in the owner's manual of the truck.

Part 575 Section 105, "Utility vehicles." This regulation requires manufacturers of utility vehicles to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated on paved roads. For example, the vehicle owner's manual is required to contain a discussion of vehicle design features that cause this type of vehicle to be more likely to roll over, and to include a discussion of driving practices that can reduce the risk of roll over. A statement is provided in the regulation that manufacturers shall include, in its entirety or equivalent form, in the vehicle owner's manual.

*Affected Public:* Individuals, households, business, other for-profit, not-for-profit, farms, Federal Government and State, Local or Tribal Government.

*Estimated Total Annual Burden:* 2,615 hours.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 1, 2005.

**Roger A. Saul,**

*Director, Office of Crashworthiness Standards.*

[FR Doc. 05-22157 Filed 11-7-05; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Harkins Cunningham on behalf of Canadian National Railway Company (WB525-10-10/31/2005), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the 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. 05-22127 Filed 11-7-05; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Art Advisory Panel—Notice of closed meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of closed meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, DC.

**DATES:** The meeting will be held November 30, 2005.

**ADDRESSES:** The closed meeting of the Art Advisory Panel will be held on November 30, 2005, in Room 4200E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:AS, 1099 14th

Street, NW., Washington, DC 20005. Telephone (202) 435-5609 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on November 30, 2005, in Room 4200E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

**David B. Robison,**  
*Chief, Appeals.*

[FR Doc. 05-22280 Filed 11-7-05; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, November 22, 2005, at 11 a.m., eastern time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1-888-912-1227, or (414) 297-1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, November 22, 2005, at 11 a.m., eastern time via a telephone conference call. You can submit written comments to

the panel by faxing the comments to (414) 297-1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the

public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 297-1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: November 1, 2005.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 05-22282 Filed 11-7-05; 8:45 am]

**BILLING CODE 4830-01-M**

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# Corrections

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Federal Register

Vol. 70, No. 215

Tuesday, November 8, 2005

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-52688; File No. SR-NYSE-2005-66]**

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend Rule 460 (Specialists Participating in Contests)**

#### *Correction*

In notice document E5-6091 beginning on page 66879 in the issue of

Thursday, November 3, 2005, make the following correction:

On page 66880, in the first column, the entire “.25” paragraph should be italicized.

[FR Doc. Z5-6091 Filed 11-7-05; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

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**Tuesday,  
November 8, 2005**

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## **Part II**

### **General Services Administration**

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**41 CFR Parts 102–71, 102–72, et al;  
Federal Management Regulation; Real  
Property Policies Update; Final Rule**

**GENERAL SERVICES  
ADMINISTRATION**

**41 CFR Parts 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–77, 102–78, 102–79, 102–80, 102–81, 102–82, and 102–83**

[FMR Amendment 2005–03; FMR Case 2005–102–8]

RIN 3090–A117

**Federal Management Regulation; Real Property Policies Update**

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal Management Regulation (FMR) to update the legal citations to conform to Public Law 107–217 and to incorporate additional policy guidance. Public Law 107–217, which was enacted on August 21, 2002, revised, restated, and recodified, without substantive change, certain laws related to public buildings, property, and works in Title 40 of the United States Code. Accordingly, this final rule cancels and replaces in its entirety FMR Amendment C–1 issued December 13, 2002. In addition to updating the legal citations, this final rule implements new accessibility standards for Federal facilities and provides additional real property policy coverage on the integrated workplace, sustainable development, outleasing, telework, siting antennas on Federal property, seismic safety, screening of excess real property, and the National Environmental Policy Act of 1969 (NEPA), as amended. The FMR and any corresponding documents may be accessed at GSA's Web site at <http://www.gsa.gov/fmr>.

**DATES:** Effective Date: November 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at [Stanley.langfeld@gsa.gov](mailto:Stanley.langfeld@gsa.gov). Please cite FMR case 2005–102–8, Amendment 2005–03.

**SUPPLEMENTARY INFORMATION:****A. Background**

As part of GSA's regulatory improvement initiative, GSA published a final rule that created FMR parts 102–71 through 102–82 (41 CFR parts 102–71 through 102–82), entitled "Real Property Policies," in the **Federal Register** on January 18, 2001 (66 FR 5358). On December 13, 2002, GSA published FMR Amendment C–1 as a final rule in the **Federal Register** (67 FR 76820), which completed the transfer of coverage on real property policies from the Federal Property Management Regulation (FPMR) to the FMR and created a separate part, FMR Part 102–83, to deal specifically with updated policy concerning the location of space. Also, on December 13, 2002, GSA published FPMR Amendment D–99 as a final rule in the **Federal Register** (67 FR 76882), which removed all real property policy coverage from the FPMR and provided cross-references that directs readers to the coverage in the FMR.

**B. Executive Order 12866**

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

**C. Regulatory Flexibility Act**

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FMR 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.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Parts 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–77, 102–78, 102–79, 102–80, 102–81, 102–82, and 102–83**

Administrative practice and procedure, Blind, Concessions, Federal buildings and facilities, Fire prevention, Government property management, Homeless, Individuals with disabilities, Location of space, Occupational safety and health, Parking, Real property acquisition, Security measures, Surplus Government property, Utilities.

Dated: August 24, 2005.

**Stephen A. Perry,**  
*Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 102 as set forth below:

■ 1. Revise part 102–71 to read as follows:

**CHAPTER 102—FEDERAL MANAGEMENT REGULATION****SUBCHAPTER C—REAL PROPERTY****PART 102–71—GENERAL**

Sec.

102–71.5 What is the scope and philosophy of the General Services Administration's (GSA) real property policies?

102–71.10 How are these policies organized?

102–71.15 [Reserved]

102–71.20 What definitions apply to GSA's real property policies?

102–71.25 Who must comply with GSA's real property policies?

102–71.30 How must these real property policies be implemented?

102–71.35 Are agencies allowed to deviate from GSA's real property policies?

**Authority:** 40 U.S.C. 121(c).

**§ 102–71.5 What is the scope and philosophy of the General Services Administration's (GSA) real property policies?**

GSA's real property policies contained in this part and parts 102–72 through 102–82 of this chapter apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. These policies cover the acquisition, management, utilization, and disposal of real property by Federal agencies that initiate and have decision-making authority over actions for real property services. The detailed guidance implementing these policies is contained in separate customer service guides.

**§ 102–71.10 How are these policies organized?**

GSA has divided its real property policies into the following functional areas:

- (a) Delegation of authority.
- (b) Real estate acquisition.
- (c) Facility management.
- (d) Real property disposal.
- (e) Design and construction.
- (f) Art-in-architecture.
- (g) Historic preservation.
- (h) Assignment and utilization of space.
  - (i) Safety and environmental management.
  - (j) Security.

- (k) Utility services.
- (l) Location of space.

**§ 102-71.15 [Reserved]**

**§ 102-71.20 What definitions apply to GSA's real property policies?**

The following definitions apply to GSA's real property policies:

*Airport* means any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

*Alteration* means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs that are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

*Carpool* means a group of two or more people regularly using a motor vehicle for transportation to and from work on a continuing basis.

*Commercial activities*, within the meaning of subpart D, part 102-74 of this chapter, are activities undertaken for the primary purpose of producing a profit for the benefit of an individual or organization organized for profit. (Activities where commercial aspects are incidental to the primary purpose of expression of ideas or advocacy of causes are not commercial activities for purposes of this part.)

*Cultural activities* include, but are not limited to, films, dramatics, dances, musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.

*Decontamination* means the complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

*Designated Official* is the highest ranking official of the primary occupant agency of a Federal facility, or, alternatively, a designee selected by mutual agreement of occupant agency officials.

*Disabled employee* means an employee who has a severe, permanent impairment that for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another. Priority may require certification by an agency medical unit,

including the Department of Veterans Affairs or the Public Health Service.

*Disposal agency* means the Executive agency designated by the Administrator of General Services to dispose of surplus real or personal property.

*Educational activities* mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.

*Emergency* includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks that are addressed by the U.S. Department of Homeland Security.

*Executive* means a Government employee with management responsibilities who, in the judgment of the employing agency head or his/her designee, requires preferential assignment of parking privileges.

*Executive agency* means an Executive department specified in section 101 of title 5; a military department specified in section 102 of such title; an independent establishment as defined in section 104(1) of such title; and a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31.

*Federal agency* means any Executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction).

*Federal agency buildings manager* means the buildings manager employed by GSA or a Federal agency that has been delegated real property management and operation authority from GSA.

*Federal Government real property services provider* means any Federal Government entity operating under, or subject to, the authorities of the Administrator of General Services that provides real property services to Federal agencies. This definition also includes private sector firms under contract with Federal agencies that deliver real property services to Federal agencies. This definition excludes any entity operating under, or subject to, authorities other than those of the Administrator of General Services.

*Flame-resistant* means meeting performance standards as described by the National Fire Protection Association (NFPA Standard No. 701). Fabrics labeled with the Underwriters Laboratories Inc., classification marking

for flammability are deemed to be flame resistant for purposes of this part.

*Foot-candle* is the illumination on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

*GSA* means the U.S. General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this part have been delegated by the Administrator of General Services.

*Highest and best use* means the most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g., zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

*Indefinite quantity contract* (commonly referred to as *term contract*) provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services during a specified contract period, with deliveries to be scheduled by the timely placement of orders with the contractor by activities designated either specifically or by class.

*Industrial property* means any real property and related personal property that has been used or that is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

*Landholding agency* means the Federal agency that has accountability for the property involved. For the purposes of this definition, accountability means that the Federal agency reports the real property on its financial statements and inventory records.

*Landing area* means any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used

for landing, takeoff, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

*Life cycle cost* is the total cost of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

*Limited combustible* means rigid materials or assemblies that have fire hazard ratings not exceeding 25 for flame spread and 150 for smoke development when tested in accordance with the American Society for Testing and Materials, Test E 84, Surface Burning Characteristics of Building Materials.

*Maintenance*, for the purposes of part 102-75, entitled "Real Property Disposal," of this chapter, means the upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment. For the purposes of part 102-74, entitled "Facility Management," of this chapter, maintenance means preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. *Ordinary maintenance* means routine recurring work that is incidental to everyday operations; *preventive maintenance* means work programmed at scheduled intervals.

*Management* means the safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

*Nationally recognized standards* encompasses any standard or modification thereof that—

(1) Has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby those interested and affected by it have reached substantial agreement on its adoption; or

(2) Was formulated through consultation by appropriate Federal agencies in a manner that afforded an opportunity for diverse views to be considered.

*No commercial value* means real property, including related personal

property, which has no reasonable prospect of producing any disposal revenues.

*Nonprofit organization* means an organization identified in 26 U.S.C. 501(c).

*Normally furnished commercially* means consistent with the level of services provided by a commercial building operator for space of comparable quality and housing tenants with comparable requirements. Service levels are based on the effort required to service space for a five-day week, one eight-hour shift schedule.

*Occupancy Emergency Organization* means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

*Occupant agency* means an organization that is assigned space in a facility under GSA's custody and control.

*Occupant Emergency Plan* means procedures developed to protect life and property in a specific federally occupied space under stipulated emergency conditions.

*Occupant Emergency Program* means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

*Postal vehicle* means a Government-owned vehicle used for the transportation of mail, or a privately owned vehicle used under contract with the U.S. Postal Service for the transportation of mail.

*Protection* means the provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against theft, vandalism, and unauthorized entry.

*Public area* means any area of a building under the control and custody of GSA that is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency.

*Public body* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

*Public building* means:

(1) Any building that is suitable for office and/or storage space for the use of one or more Federal agencies or mixed-ownership corporations, such as Federal office buildings, post offices, customhouses, courthouses, border

inspection facilities, warehouses, and any such building designated by the President. It also includes buildings of this sort that are acquired by the Federal Government under the Administrator's installment-purchase, lease-purchase, and purchase-contract authorities.

(2) Public building does not include buildings:

(i) On the public domain.

(ii) In foreign countries.

(iii) On Indian and native Eskimo properties held in trust by the United States.

(iv) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes.

(v) On or used in connection with river, harbor, flood control, reclamation or power projects, or for chemical manufacturing or development projects, or for nuclear production, research, or development projects.

(vi) On or used in connection with housing and residential projects.

(vii) On military installations.

(viii) On Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(ix) Excluded by the President.

*Real property* means:

(1) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except—

(i) The public domain;

(ii) Lands reserved or dedicated for national forest or national park purposes;

(iii) Minerals in lands or portions of lands withdrawn or reserved from the public domain that the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(iv) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved that the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and

(v) Crops when designated by such agency for disposition by severance and removal from the land.

(2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for

disposition without the underlying land (including such as may be located on the public domain, on lands withdrawn or reserved from the public domain, on lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers (with or without undercarriages).

(3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency, whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

*Recognized labor organization* means a labor organization recognized under title VII of the Civil Service Reform Act of 1978 (Pub. L. 95-454), as amended, governing labor-management relations.

*Recreational activities* include, but are not limited to, the operations of gymnasiums and related facilities.

*Regional Officer*, within the meaning of part 102-74, subpart D of this chapter, means the Federal official designated to supervise the implementation of the occasional use provisions of 40 U.S.C. 581(h)(2). The Federal official may be an employee of GSA or a Federal agency that has delegated authority from GSA to supervise the implementation of the occasional use provisions of 40 U.S.C. 581(h)(2).

*Related personal property* means any personal property—

(1) That is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and the removal of which would significantly diminish the economic value of the real property (normally common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property); or

(2) That is determined by the Administrator of General Services to be related to the real property.

*Repairs* means those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

*Ridesharing* means the sharing of the commute to and from work by two or more people, on a continuing basis,

regardless of their relationship to each other, in any mode of transportation, including, but not limited to, carpools, vanpools, buspools, and mass transit.

*State* means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

*Unit price agreement* provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services at a specified price, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the lessor by activities designated either specifically or by class.

*Unusual hours* means work hours that are frequently required to be varied and do not coincide with any regular work schedule. This category includes time worked by individuals who regularly or frequently work significantly more than 8 hours per day. Unusual hours does not include time worked by shift workers, by those on alternate work schedules, and by those granted exceptions to the normal work schedule (e.g., flex-time).

*Upon approval from GSA* means when an agency either has a delegation of authority document from the Administrator of General Services or written approval from the Administrator or his/her designee before proceeding with a specified action.

*Vanpool* means a group of at least 8 persons using a passenger van or a commuter bus designed to carry 10 or more passengers. Such a vehicle must be used for transportation to and from work in a single daily round trip.

*Zonal allocations* means the allocation of parking spaces on the basis of zones established by GSA in conjunction with occupant agencies. In metropolitan areas where this method is used, all agencies located in a designated zone will compete for available parking in accordance with instructions issued by GSA. In establishing this procedure, GSA will consult with all affected agencies.

#### **§ 102-71.25 Who must comply with GSA's real property policies?**

Federal agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with these policies.

#### **§ 102-71.30 How must these real property policies be implemented?**

Each Federal Government real property services provider must provide services that are in accord with the policies presented in parts 102-71 through 102-82 of this chapter. Also,

Federal agencies must make the provisions of any contract with private sector real property services providers conform to the policies in parts 102-71 through 102-82 of this chapter.

#### **§ 102-71.35 Are agencies allowed to deviate from GSA's real property policies?**

Yes, see §§ 102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of these real property policies.

■ 2. Revise part 102-72 to read as follows:

### **PART 102-72—DELEGATION OF AUTHORITY**

#### **Subpart A—General Provisions**

Sec.

102-72.5 What is the scope of this part?

102-72.10 What basic policy governs delegation of authority to Federal agencies?

#### **Subpart B—Delegation of Authority**

102-72.15 What criteria must a delegation meet?

102-72.20 Are there limitations on this delegation of authority?

102-72.25 What are the different types of delegations of authority?

102-72.30 What are the different types of delegations related to real estate leasing?

102-72.35 What are the requirements for obtaining an Administrative Contracting Officer (ACO) delegation from GSA?

102-72.40 What are facility management delegations?

102-72.45 What are the different types of delegations related to facility management?

102-72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?

102-72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?

102-72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?

102-72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?

102-72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?

102-72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?

102-72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?

102-72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?

102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?

102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?

102–72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?

102–72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?

Authority: 40 U.S.C. 121(c), (d) and (e).

### Subpart A—General Provisions

#### § 102–72.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

#### § 102–72.10 What basic policy governs delegation of authority to Federal agencies?

The Administrator of General Services may delegate and may authorize successive redelegations of the real property authority vested in the Administrator to any Federal agency.

### Subpart B—Delegation of Authority

#### § 102–72.15 What criteria must a delegation meet?

Delegations must be in the Government's best interest, which means that GSA must evaluate such factors as whether a delegation would be cost effective for the Government in the delivery of space.

#### § 102–72.20 Are there limitations on this delegation of authority?

Federal agencies must exercise delegated real property authority and functions according to the parameters described in each delegation of authority document, and Federal agencies may only exercise the authority of the Administrator that is specifically provided within the delegation of authority document.

#### § 102–72.25 What are the different types of delegations of authority?

The basic types of GSA Delegations of Authority are—

- (a) Delegation of Leasing Authority;
- (b) Delegation of Real Property Management and Operation Authority;
- (c) Delegation of Individual Repair and Alteration Project Authority;
- (d) Delegation of Lease Management Authority (Contracting Office Representative Authority);
- (e) Delegation of Administrative Contracting Officer (ACO) Authority;
- (f) Delegation of Real Property Disposal Authority;

(g) Security Delegation of Authority; and

(h) Utility Services Delegation of Authority.

#### § 102–72.30 What are the different types of delegations related to real estate leasing?

Delegations related to real estate leasing include the following:

(a) Categorical space delegations and agency special purpose space delegations (see § 102–73.140 of this title).

(b) The Administrator of General Services has issued a standing delegation of authority (under a program known as "Can't Beat GSA Leasing") to the heads of all Federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years and below prospectus level requirements, regardless of geographic location. This delegation includes some conditions Federal agencies must meet when conducting the procurement themselves, such as training in lease contracting and reporting data to GSA.

(c) An ACO delegation, in addition to lease management authority, provides Federal agencies with limited contracting officer authority to perform such duties as paying and withholding lessor rent and modifying lease provisions that do not change the lease term length or the amount of space under lease.

#### § 102–72.35 What are the requirements for obtaining an Administrative Contracting Officer (ACO) delegation from GSA?

When Federal agencies do not exercise the delegation of authority for general purpose space mentioned in § 102–72.30(b) of this part, GSA may consider granting an ACO delegation when Federal agencies—

(a) Occupy at least 90 percent of the building's GSA-controlled space, or Federal agencies have the written concurrence of 100 percent of rent-paying occupants covered under the lease; and

(b) Have the technical capability to perform the leasing function.

#### § 102–72.40 What are facility management delegations?

Facility management delegations give Executive agencies authority to operate and manage buildings day to day, to perform individual repair and alteration projects, and manage real property leases.

#### § 102–72.45 What are the different types of delegations related to facility management?

The principal types of delegations involved in the management of facilities are—

(a) Real property management and operation authority;

(b) Individual repair and alteration project authority; and

(c) Lease management authority (contracting officer representative authority).

#### § 102–72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?

With this delegation, Executive agencies have the authority to operate and manage buildings day to day. Delegated functions may include building operations, maintenance, recurring repairs, minor alterations, historic preservation, concessions, and energy management of specified buildings subject to the conditions in the delegation document.

#### § 102–72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?

An Executive agency may be delegated real property management and operation authority when it—

(a) Occupies at least 90 percent of the space in the Government-controlled facility, or has the concurrence of 100 percent of the rent-paying occupants to perform these functions; and

(b) Demonstrates that it can perform the delegated real property management and operation responsibilities.

#### § 102–72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?

With this delegation of authority, Executive agencies have the responsibility to perform individual repair and alterations projects. Executive agencies are delegated repair and alterations authority for reimbursable space alteration projects up to the simplified acquisition threshold, as specified in the GSA Customer Guide to Real Property.

#### § 102–72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?

Executive agencies may be delegated repair and alterations authority for other individual alteration projects when they demonstrate the ability to perform the delegated repair and alterations responsibilities and when such a delegation promotes efficiency and economy.

**§ 102–72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?**

When an Executive agency does not exercise the delegation of authority mentioned in § 102–72.30(b) to lease general purpose space itself, it may be delegated, upon request, lease management authority to manage the administration of one or more lease contracts awarded by GSA.

**§ 102–72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?**

An Executive agency may be delegated lease management authority when it—

(a) Occupies at least 90 percent of the building's GSA-controlled space or has the written concurrence of 100 percent of rent-paying occupants covered under the lease to perform this function; and

(b) Demonstrates the ability to perform the delegated lease management responsibilities.

**§ 102–72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?**

With this delegation, Executive agencies have the authority to utilize and dispose of excess or surplus real and related personal property and to grant approvals and make determinations, subject to the conditions in the delegation document.

**§ 102–72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?**

While disposal delegations to Executive agencies are infrequent, GSA may delegate authority to them based on situations involving certain low-value properties and when they can demonstrate that they have the technical expertise to perform the disposition functions. GSA may grant special delegations of authority to Executive agencies for the utilization and disposal of certain real property through the procedures set forth in part 102–75, subpart F of this chapter.

**§ 102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?**

Law enforcement and related security functions were transferred to the Department of Homeland Security upon its establishment in 2002. The Homeland Security Act authorizes the Secretary of Homeland Security, in consultation with the Administrator of General Services, to issue regulations necessary for the protection and administration of property owned or occupied by the Federal Government

and persons on the property. Notwithstanding the foregoing, GSA retained all powers, functions and authorities necessary for the operation, maintenance, and protection of buildings and grounds owned and occupied by the Federal Government and under the jurisdiction, custody, or control of GSA.

**§ 102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?**

An Executive agency may request a security delegation from GSA by submitting a written request with the detailed basis for the requested delegation to the Assistant Regional Administrator, PBS, in the region where the building is located. A request for multiple buildings in multiple regions should be directed to the Commissioner of PBS. The delegation may be granted where the requesting agency demonstrates a compelling need for the delegated authority and the delegation is not inconsistent with the authorities of any other law enforcement agency.

**§ 102–72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?**

With this delegation, Executive agencies have the authority to negotiate and execute utility services contracts for periods over one year but not exceeding ten years for their use and benefit. Agencies also have the authority to intervene in utility rate proceedings to represent the consumer interests of the Federal Government, if so provided in the delegation of authority.

**§ 102–72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?**

Executive agencies may be delegated utility services authority when they have the technical expertise and adequate staffing.

■ 3. Revise part 102–73 to read as follows:

**PART 102–73—REAL ESTATE ACQUISITION**

**Subpart A—General Provisions**

Sec.

102–73.5 What is the scope of this part?

102–73.10 What is the basic real estate acquisition policy?

102–73.15 What real estate acquisition and related services may Federal agencies provide?

**United States Postal Service-Controlled Space**

102–73.20 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

**Locating Federal Facilities**

102–73.25 What policies must Executive agencies comply with in locating Federal facilities?

**Historic Preservation**

102–73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

**Prospectus Requirements**

102–73.35 Is a prospectus required for all acquisition, construction, or alteration projects?

102–73.40 What happens if the dollar value of the project exceeds the prospectus threshold?

**Subpart B—Acquisition by Lease**

102–73.45 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

102–73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?

102–73.55 On what basis must Federal agencies acquire leases?

102–73.60 With whom may Federal agencies enter into lease agreements?

102–73.65 Are there any limitations on leasing certain types of space?

102–73.70 Are Executive agencies required to acquire leased space by negotiation?

102–73.75 What functions must Federal agencies perform with regard to leasing building space?

102–73.80 Who is authorized to contact lessors, offerors, or potential offerors concerning space leased or to be leased?

102–73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?

102–73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?

102–73.95 How are Federal agencies required to assist GSA?

**Competition in Contracting Act of 1984**

102–73.100 Is the Competition in Contracting Act of 1984, as amended (CICA), applicable to lease acquisition?

**National Environmental Policy Act of 1969 (NEPA)**

102–73.105 What policies must Federal agencies follow to implement the requirements of NEPA when acquiring real property by lease?

**Lease Construction**

102–73.110 What rules must Executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?

**Price Preference for Historic Properties**

102–73.115 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?

102–73.120 How much of a price preference must Federal agencies give when acquiring leased space using the lowest

price technically acceptable source selection process?

- 102-73.125 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?

#### Leases With Purchase Options

- 102-73.130 When may Federal agencies consider acquiring leases with purchase options?

#### Scoring Rules

- 102-73.135 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

#### Delegations of Leasing Authority

- 102-73.140 When may agencies that do not possess independent leasing authority lease space?

#### Categorical Space Delegations

- 102-73.145 What is a categorical space delegation?  
102-73.150 What is the policy for categorical space delegations?  
102-73.155 What types of space can Federal agencies acquire with a categorical space delegation?

#### Special Purpose Space Delegations

- 102-73.160 What is an agency special purpose space delegation?  
102-73.165 What is the policy for agency special purpose space delegations?  
102-73.170 What types of special purpose space may the Department of Agriculture lease?  
102-73.175 What types of special purpose space may the Department of Commerce lease?  
102-73.180 What types of special purpose space may the Department of Defense lease?  
102-73.185 What types of special purpose space may the Department of Energy lease?  
102-73.190 What types of special purpose space may the Federal Communications Commission lease?  
102-73.195 What types of special purpose space may the Department of Health and Human Services lease?  
102-73.196 What types of special purpose space may the Department of Homeland Security lease?  
102-73.200 What types of special purpose space may the Department of the Interior lease?  
102-73.205 What types of special purpose space may the Department of Justice lease?  
102-73.210 What types of special purpose space may the Office of Thrift Supervision lease?  
102-73.215 What types of special purpose space may the Department of Transportation lease?  
102-73.220 What types of special purpose space may the Department of the Treasury lease?  
102-73.225 What types of special purpose space may the Department of Veterans Affairs lease?

#### Limitations on the Use of Delegated Authority

- 102-73.230 When must Federal agencies submit a prospectus to lease real property?  
102-73.235 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?  
102-73.240 What policy must Federal agencies follow to acquire official parking spaces?

#### Subpart C—Acquisition by Purchase or Condemnation

##### Buildings

- 102-73.245 When may Federal agencies consider purchase of buildings?  
102-73.250 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?  
102-73.255 What factors must Executive agencies consider when purchasing sites?

##### Land

- 102-73.260 What land acquisition policy must Federal agencies follow?  
102-73.265 What actions must Federal agencies take to facilitate land acquisition?

##### Just Compensation

- 102-73.270 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?  
102-73.275 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?  
102-73.280 Where can Federal agencies find guidance on how to appraise the value of properties being acquired by the Federal Government?  
102-73.285 [Reserved]  
102-73.290 Are there any prohibitions when a Federal agency pays “just compensation” to a tenant?

##### Expenses Incidental to Property Transfer

- 102-73.295 What property transfer expenses must Federal agencies cover when acquiring real property?

##### Litigation Expenses

- 102-73.300 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

##### Relocation Assistance Policy

- 102-73.305 What relocation assistance policy must Federal agencies follow?

**Authority:** 40 U.S.C. 121(c); Sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 301 note); Sec. 1-201(b), E.O. 12072, 43 FR 36869, 3 CFR, 1978 Comp., p. 213.

#### Subpart A—General Provisions

##### § 102-73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings

Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

##### § 102-73.10 What is the basic real estate acquisition policy?

When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner.

##### § 102-73.15 What real estate acquisition and related services may Federal agencies provide?

Federal agencies, upon approval from GSA, may provide real estate acquisition and related services, including leasing (with or without purchase options), building and/or site purchase, condemnation, and relocation assistance. For information on the design and construction of Federal facilities, see part 102-76 of this chapter.

##### United States Postal Service-Controlled Space

##### § 102-73.20 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

Yes, after considering the availability of GSA-controlled space and determining that no such space is available to meet its needs, Federal agencies must extend priority consideration to available space in buildings under the custody and control of the United States Postal Service (USPS) in fulfilling Federal agency space needs, as specified in the “Agreement Between General Services Administration and the United States Postal Service Covering Real and Personal Property Relationships and Associated Services,” dated July 1985.

##### Locating Federal Facilities

##### § 102-73.25 What policies must Executive agencies comply with in locating Federal facilities?

Executive agencies must comply with the location policies in this part and part 102-83 of this chapter.

##### Historic Preservation

##### § 102-73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

Prior to acquiring, constructing, or leasing space, Federal agencies must comply with the provisions of section

110(a) of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470h-2(a)), regarding the use of historic properties. Federal agencies can find guidance on protecting, enhancing, and preserving historic and cultural property in part 102-78 of this chapter.

### Prospectus Requirements

#### § 102-73.35 Is a prospectus required for all acquisition, construction, or alteration projects?

No, a prospectus is not required if the dollar value of a project does not exceed the prospectus threshold. 40 U.S.C. 3307 establishes a prospectus threshold, applicable to Federal agencies operating under, or subject to, the authorities of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building, and establishes a prospectus threshold to lease any space for use for public purposes. The current prospectus threshold value for each fiscal year can be accessed by entering GSA's Web site at <http://www.gsa.gov> and then inserting "prospectus thresholds" in the search mechanism in the upper right-hand corner of the page.

#### § 102-73.40 What happens if the dollar value of the project exceeds the prospectus threshold?

Projects require approval by the Senate and the House of Representatives if the dollar value of a project exceeds the prospectus threshold. To obtain this approval, the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives. Furthermore, as indicated in § 102-72.30(b), the general purpose lease delegation authority is restricted to below the prospectus threshold, and therefore, GSA must conduct all lease acquisitions over the threshold.

### Subpart B—Acquisition by Lease

#### § 102-73.45 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

Federal agencies may consider leases of privately owned land and buildings only when needs cannot be met satisfactorily in Government-controlled space and one or more of the following conditions exist:

(a) Leasing is more advantageous to the Government than constructing a new building, or more advantageous than altering an existing Federal building.

(b) New construction or alteration is unwarranted because demand for space

in the community is insufficient, or is indefinite in scope or duration.

(c) Federal agencies cannot provide for the completion of a new building within a reasonable time.

#### § 102-73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?

No, Federal agencies possessing independent statutory authority to acquire leased space are not subject to GSA authority and, therefore, may not be subject to the requirements of this part. However, lease prospectus approval requirements of 40 U.S.C. Section 3307 may still apply appropriations to lease of space for public purposes under an agency's independent leasing authority.

#### § 102-73.55 On what basis must Federal agencies acquire leases?

Federal agencies must acquire leases on the most favorable basis to the Federal Government, with due consideration to maintenance and operational efficiency, and at charges consistent with prevailing market rates for comparable facilities in the community.

#### § 102-73.60 With whom may Federal agencies enter into lease agreements?

Federal agencies, upon approval from GSA, may enter into lease agreements with any person, partnership, corporation, or other public or private entity, provided that such lease agreements do not bind the Government for periods in excess of twenty years (40 U.S.C. 585(a)). Federal agencies may not enter into lease agreements with persons who are barred from contracting with the Federal Government (*e.g.*, Members of Congress or debarred or suspended contractors).

#### § 102-73.65 Are there any limitations on leasing certain types of space?

Yes, the limitations on leasing certain types of space are as follows:

(a) In general, Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average annual net rental cost of leasing such space would exceed the prospectus threshold (40 U.S.C. 3307(f)(1)).

(b) However, Federal agencies may lease such space if the Administrator of General Services first determines that leasing such space is necessary to meet requirements that cannot be met in public buildings, and then submits such

determination to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives in accordance with 40 U.S.C. 3307(f)(2).

#### § 102-73.70 Are Executive agencies required to acquire leased space by negotiation?

Yes, Executive agencies must acquire leased space by negotiation, except where the sealed bid procedure is required by the Competition in Contracting Act, as amended (CICA) (41 U.S.C. 253(a)).

#### § 102-73.75 What functions must Federal agencies perform with regard to leasing building space?

Federal agencies, upon approval from GSA, must perform all functions of leasing building space, and land incidental thereto, for their use except as provided in this subpart.

#### § 102-73.80 Who is authorized to contact lessor, offerors, or potential offerors concerning space leased or to be leased?

No one, except the Contracting Officer or his or her designee, may contact lessors, offerors, or potential offerors concerning space leased or to be leased for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services.

#### § 102-73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?

Yes, upon request, GSA may perform, on a reimbursable basis, all functions of leasing building space, and land incidental thereto, for Federal agencies possessing independent statutory authority to lease space. However, GSA reserves the right to accept or reject reimbursable leasing service requests on a case-by-case basis.

#### § 102-73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?

Federal agencies must apply the contingent fee policies in 48 CFR 3.4 to all negotiated and sealed bid contracts for the acquisition of real property by lease. Federal agencies must appropriately adapt the representations and covenants required by that subpart for use in leases of real property for Government use.

#### § 102-73.95 How are Federal agencies required to assist GSA?

The heads of Federal agencies must—

(a) Cooperate with and assist the Administrator of General Services in carrying out his responsibilities respecting office buildings and space;

(b) Take measures to give GSA early notice of new or changing space requirements;

(c) Seek to economize their requirements for space; and

(d) Continuously review their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities that can be carried on elsewhere without excessive costs or significant loss of efficiency.

#### **Competition in Contracting Act of 1984**

##### **§ 102-73.100 Is the Competition in Contracting Act of 1984, as amended (CICA), applicable to lease acquisition?**

Yes, Executive agencies must obtain full and open competition among suitable locations meeting minimum Government requirements, except as otherwise provided by CICA, 41 U.S.C. 253.

#### **National Environmental Policy Act of 1969 (NEPA)**

##### **§ 102-73.105 What policies must Federal agencies follow to implement the requirements of NEPA when acquiring real property by lease?**

Federal agencies must follow the NEPA policies identified in §§ 102-76.40 and 102-76.45 of this chapter.

#### **Lease Construction**

##### **§ 102-73.110 What rules must Executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?**

When acquiring leasehold interests in buildings to be constructed for Federal Government use, Executive agencies must—

(a) Establish detailed building specifications before agreeing to a contract that will result in the construction of a building;

(b) Use competitive procedures;

(c) Inspect every building during construction to ensure that the building complies with the Government's specifications;

(d) Evaluate every building after completion of construction to determine that the building complies with the Government's specifications; and

(e) Ensure that any contract that will result in the construction of a building contains provisions permitting the Government to reduce the rent during any period when the building does not comply with the Government's specifications.

#### **Price Preference for Historic Properties**

##### **§ 102-73.115 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?**

Yes, Federal agencies must give a price preference to space in historic properties when acquiring leased space using either the lowest price technically acceptable or the best value tradeoff source selection processes.

##### **§ 102-73.120 How much of a price preference must Federal agencies give when acquiring leased space using the lowest price technically acceptable source selection process?**

Federal agencies must give a price evaluation preference to space in historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

##### **§ 102-73.125 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?**

When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference to historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will

give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

#### **Leases With Purchase Options**

##### **§ 102-73.130 When may Federal agencies consider acquiring leases with purchase options?**

Agencies may consider leasing with a purchase option at or below fair market value, consistent with the lease-purchase scoring rules, when one or more of the following conditions exist:

(a) The purchase option offers economic and other advantages to the Government and is consistent with the Government's goals.

(b) The Government is the sole or major tenant of the building, and has a long-term need for the property.

(c) Leasing with a purchase option is otherwise in the best interest of the Government.

#### **Scoring Rules**

##### **§ 102-73.135 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?**

All Federal agencies must follow the budget scorekeeping rules for leases, capital leases, and lease-purchases identified in appendices A and B of OMB Circular A-11. (For availability, see 5 CFR 1310.3.)

#### **Delegations of Leasing Authority**

##### **§ 102-73.140 When may agencies that do not possess independent leasing authority lease space?**

Federal agencies may perform for themselves all functions necessary to acquire leased space in buildings and land incidental thereto when—

(a) The authority may be delegated (see § 102-72.30) on the different types of delegations related to real estate leasing);

(b) The space may be leased for no rental, or for a nominal consideration of \$1 per annum, and is limited to terms not to exceed 1 year;

(c) Authority has been requested by an Executive agency and a specific delegation has been granted by the Administrator of General Services;

(d) A categorical delegation has been granted by the Administrator of General Services for space to accommodate particular types of agency activities, such as military recruiting offices or space for certain county level agricultural activities (see § 102-73.155 for a listing of categorical delegations); or

(e) The required space is found by the Administrator of General Services to be wholly or predominantly utilized for the special purposes of the agency to occupy such space and is not generally suitable for use by other agencies. Federal agencies must obtain prior approval from the GSA regional office having jurisdiction for the proposed leasing action, before initiating a leasing action involving 2,500 or more square feet of such special purpose space. GSA's approval must be based upon a finding that there is no vacant Government-owned or leased space available that will meet the agency's requirements. Agency special purpose space delegations can be found in §§ 102-73.170 through 102-73.225.

### Categorical Space Delegations

#### § 102-73.145 What is a categorical space delegation?

A categorical space delegation is a standing delegation of authority from the Administrator of General Services to a Federal agency to acquire a type of space identified in § 102-73.155, subject to limitations in this part.

#### § 102-73.150 What is the policy for categorical space delegations?

Subject to the limitations cited in §§ 102-73.230 through 102-73.240, all Federal agencies are authorized to acquire the types of space listed in § 102-73.155 and, except where otherwise noted, may lease space for terms, including all options, of up to 20 years.

#### § 102-73.155 What types of space can Federal agencies acquire with a categorical space delegation?

Federal agencies can use categorical space delegations to acquire—

- (a) Space to house antennas, repeaters, or transmission equipment;
- (b) Depots, including, but not limited to, stockpiling depots and torpedo net depots;
- (c) Docks, piers, and mooring facilities (including closed storage space required in combination with such facilities);
- (d) Fumigation areas;
- (e) Garage space (may be leased only on a fiscal year basis);
- (f) Greenhouses;
- (g) Hangars and other airport operating facilities including, but not limited to, flight preparation space, aircraft storage areas, and repair shops;
- (h) Hospitals, including medical clinics;
- (i) Housing (temporary), including hotels (does not include quarters obtained pursuant to temporary duty travel or employee relocation);
- (j) Laundries;

(k) Quarantine facilities for plants, birds, and other animals;

(l) Ranger stations, *i.e.*, facilities that typically include small offices staffed by one or more uniformed employees, and may include sleeping/family quarters, parking areas, garages, and storage space. Office space within ranger stations is minimal and does not comprise a majority of the space. (May also be referred to as guard stations, information centers, or kiosks);

(m) Recruiting space for the armed forces (lease terms, including all options, limited to 5 years);

(n) Schools directly related to the special purpose function(s) of an agency;

(o) Specialized storage/depot facilities, such as cold storage; self-storage units; and lumber, oil, gasoline, shipbuilding materials, and pesticide materials/equipment storage (general purpose warehouse type storage facilities not included); and

(p) Space for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations).

### Special Purpose Space Delegations

#### § 102-73.160 What is an agency special purpose space delegation?

An agency special purpose space delegation is a standing delegation of authority from the Administrator of General Services to specific Federal agencies to lease their own special purpose space (identified in §§ 102-73.170 through 102-73.225), subject to limitations in this part.

#### § 102-73.165 What is the policy for agency special purpose space delegations?

Subject to the limitations on annual rental amounts, lease terms, and leases on parking spaces cited in §§ 102-73.230 through 102-73.240, the agencies listed below are authorized to acquire special purpose space associated with that agency and, except where otherwise noted, may lease such space for terms, including all options, of up to 20 years. The agencies and types of space subject to special purpose space delegations are specified in §§ 102-73.170 through 102-73.225.

#### § 102-73.170 What types of special purpose space may the Department of Agriculture lease?

The Department of Agriculture is delegated the authority to lease the following types of special purpose space:

- (a) Cotton classing laboratories (lease terms, including all options, limited to 5 years).
- (b) Land (if unimproved, may be leased only on a fiscal year basis).

(c) Miscellaneous storage by cubic foot or weight basis.

(d) Office space when required to be located in or adjacent to stockyards, produce markets, produce terminals, airports, and other ports (lease terms, including all options, limited to 5 years).

(e) Space for agricultural commodities stored in licensed warehouses and utilized under warehouse contracts.

(f) Space utilized in cooperation with State and local governments or their instrumentalities (extension services) where the cooperating State or local government occupies a portion of the space and pays a portion of the rent.

#### § 102-73.175 What types of special purpose space may the Department of Commerce lease?

The Department of Commerce is delegated authority to lease the following types of special purpose space:

(a) Space required by the Census Bureau in connection with conducting the decennial census (lease terms, including all options, limited to 5 years).

(b) Laboratories for testing materials, classified or ordnance devices, calibration of instruments, and atmospheric and oceanic research (lease terms, including all options, limited to 5 years).

(c) Maritime training stations.

(d) Radio stations.

(e) Land (if unimproved, may be leased only on a fiscal year basis).

(f) National Weather Service meteorological facilities.

#### § 102-73.180 What types of special purpose space may the Department of Defense lease?

The Department of Defense is delegated authority to lease the following types of special purpose space:

(a) Air Force—Civil Air Patrol Liaison Offices and land incidental thereto when required for use incidental to, in conjunction with, and in close proximity to airports, including aircraft and warning stations (if unimproved, land may be leased only on a fiscal year basis; for space, lease terms, including all options, limited to 5 years).

(b) Armories.

(c) Film library in the vicinity of Washington, DC.

(d) Mess halls.

(e) Ports of embarkation and debarkation.

(f) Post exchanges.

(g) Postal Concentration Center, Long Island City, NY.

(h) Recreation centers.

- (i) Reserve training space.
- (j) Service clubs.
- (k) Testing laboratories (lease terms, including all options, limited to 5 years).

**§ 102–73.185 What types of special purpose space may the Department of Energy lease?**

The Department of Energy, as the successor to the Atomic Energy Commission, is delegated authority to lease facilities housing the special purpose or special location activities of the old Atomic Energy Commission.

**§ 102–73.190 What types of special purpose space may the Federal Communications Commission lease?**

The Federal Communications Commission is delegated authority to lease monitoring station sites.

**§ 102–73.195 What types of special purpose space may the Department of Health and Human Services lease?**

The Department of Health and Human Services is delegated authority to lease laboratories (lease terms, including all options, limited to 5 years).

**§ 102–73.196 What types of special purpose space may the Department of Homeland Security lease?**

The Department of Homeland Security is delegated authority to lease whatever space its organizational units or components had authority to lease prior to the creation of the Department of Homeland Security, including—

- (a) Border patrol offices similar in character and utilization to police stations, involving the handling of prisoners, firearms, and motor vehicles, regardless of location (lease terms, including all options limited to 5 years);
- (b) Space for the U.S. Coast Guard oceanic unit, Woods Hole, MA; and
- (c) Space for the U.S. Coast Guard port security activities.

**§ 102–73.200 What types of special purpose space may the Department of the Interior lease?**

The Department of the Interior is delegated authority to lease the following types of special purpose space:

- (a) Space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation, Bureau of Land Management, and the Geological Survey in areas where no other Government agencies are quartered (unimproved land may be leased only on a fiscal year basis).
- (b) National Parks/Monuments Visitors Centers consisting primarily of special purpose space (e.g., visitor reception, information, and rest room

facilities) and not general office or administrative space.

**§ 102–73.205 What types of special purpose space may the Department of Justice lease?**

The Department of the Justice is delegated authority to lease the following types of special purpose space:

- (a) U.S. marshals office in any Alaska location (lease terms, including all options, limited to 5 years).
- (b) Space used for storage and maintenance of surveillance vehicles and seized property (lease terms, including all options, limited to 5 years).
- (c) Space used for review and custody of records and other evidentiary materials (lease terms, including all options, limited to 5 years).
- (d) Space used for trial preparation where space is not available in Federal buildings, Federal courthouses, USPS facilities, or GSA-leased buildings (lease terms limited to not more than 1 year).

**§ 102–73.210 What types of special purpose space may the Office of Thrift Supervision lease?**

The Office of Thrift Supervision is delegated authority to lease space for field offices of Examining Divisions required to be located within Office of Thrift Supervision buildings or immediately adjoining or adjacent to such buildings (lease terms, including all options, limited to 5 years).

**§ 102–73.215 What types of special purpose space may the Department of Transportation lease?**

The Department of Transportation is delegated authority to lease the following types of special purpose space (or real property):

- (a) Land for the Federal Aviation Administration (FAA) at airports (unimproved land may be leased only on a fiscal year basis).
- (b) General purpose office space not exceeding 10,000 square feet for the FAA at airports in buildings under the jurisdiction of public or private airport authorities (lease terms, including all options, limited to 5 years).

**§ 102–73.220 What types of special purpose space may the Department of the Treasury lease?**

The Department of the Treasury is delegated authority to lease the following types of special purpose space:

- (a) Space and land incidental thereto for the use of the Comptroller of the Currency, as well as the operation, maintenance and custody thereof (if unimproved, land may be leased only

on a fiscal year basis; lease term for space, including all options, limited to 5 years).

(b) Aerostat radar facilities necessary for U.S. Custom Service mission activities.

**§ 102–73.225 What types of special purpose space may the Department of Veterans Affairs lease?**

The Department of Veterans Affairs is delegated authority to lease the following types of special purpose space:

- (a) Guidance and training centers located at schools and colleges.
- (b) Space used for veterans hospitals, including outpatient and medical-related clinics, such as drug, mental health, and alcohol.

**Limitations on the Use of Delegated Authority**

**§ 102–73.230 When must Federal agencies submit a prospectus to lease real property?**

In accordance with 40 U.S.C. 3307, Federal agencies must submit a prospectus to the Administrator of General Services for leases involving a net annual rental, excluding services and utilities, in excess of the prospectus threshold provided in 40 U.S.C. 3307. Agencies must be aware that prospectus thresholds are indexed and change each year.

**§ 102–73.235 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?**

Pursuant to GSA's authority to enter into lease agreements contained in 40 U.S.C. 585(a)(2), agencies delegated the authorities outlined herein may enter into leases for the term specified in the delegation. In those cases where agency special purposes space delegations include the authority to acquire unimproved land, the land may be leased only on a fiscal year basis.

**§ 102–73.240 What policy must Federal agencies follow to acquire official parking spaces?**

Federal agencies that need parking must utilize available Government-owned or leased facilities. Federal agencies must make inquiries regarding availability of such Government-controlled space to GSA regional offices and document such inquiries. If no suitable Government-controlled facilities are available, an agency may use its own procurement authority to acquire parking by service contract.

**Subpart C—Acquisition by Purchase or Condemnation****Buildings****§ 102–73.245 When may Federal agencies consider purchase of buildings?**

A Federal agency may consider purchase of buildings on a case-by-case basis if it has landholding authority and when one or more of the following conditions exist:

(a) It is economically more beneficial to own and manage the property.

(b) There is a long-term need for the property.

(c) The property is an existing building, or a building nearing completion, that can be purchased and occupied within a reasonable time.

(d) When otherwise in the best interests of the Government.

**§ 102–73.250 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?**

Yes, when purchasing buildings, agencies must comply with the location policies in this part and part 102–83 of this chapter.

**§ 102–73.255 What factors must Executive agencies consider when purchasing sites?**

Agencies must locate proposed Federal buildings on sites that are most advantageous to the United States. Executive agencies must consider factors such as whether the site will contribute to economy and efficiency in the construction, maintenance, and operation of the individual building, and how the proposed site relates to the Government's total space needs in the community. Prior to acquiring, constructing, or leasing buildings (or sites for such buildings), Federal agencies must use, to the maximum extent feasible, historic properties available to the agency. In site selections, Executive agencies must consider Executive Order 12072 (August 16, 1978, 43 FR 36869) and Executive Order 13006 (40 U.S.C. 3306 note). In addition, Executive agencies must consider all of the following:

(a) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of part 102–75, subpart B, of this chapter.

(b) A site adjacent to or in the proximity of an existing Federal building that is well located and is to be retained for long-term occupancy.

(c) The environmental condition of proposed sites prior to purchase. The sites must be free from contamination, unless it is otherwise determined to be

in the best interests of the Government to purchase a contaminated site (e.g., reuse of a site under an established "Brownfields" program).

(d) Purchase options to secure the future availability of a site.

(e) All applicable location policies in this part and part 102–83 of this chapter.

**Land****§ 102–73.260 What land acquisition policy must Federal agencies follow?**

Federal agencies must follow the land acquisition policy in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. 4651–4655, which—

(a) Encourages and expedites the acquisition of real property by agreements with owners;

(b) Avoids litigation, including condemnation actions, where possible and relieves congestion in the courts;

(c) Provides for consistent treatment of owners; and

(d) Promotes public confidence in Federal land acquisition practices.

**§ 102–73.265 What actions must Federal agencies take to facilitate land acquisition?**

To facilitate land acquisition, Federal agencies must, among other things—

(a) Appraise the real property before starting negotiations and give the owner (or the owner's representative) the opportunity to accompany the appraiser during the inspection;

(b) Establish an amount estimated to be the just compensation before starting negotiations and promptly offer to acquire the property for this full amount;

(c) Try to negotiate with owners on the price;

(d) Pay the agreed purchase price to the property owner, or in the case of a condemnation, deposit payment in the registry of the court, for the benefit of the owner, before requiring the owner to surrender the property; and

(e) Provide property owners (and occupants) at least 90 days' notice of displacement before requiring anyone to move. If a Federal agency permits the owner to keep possession for a short time after acquiring the owner's property, Federal agencies must not charge rent in excess of the property's fair rental value to a short-term occupier.

**Just Compensation****§ 102–73.270 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?**

Yes, Federal agencies must provide the owner with a written statement of

this amount and summarize the basis for it. When it is appropriate, Federal agencies must separately state the just compensation for the property to be acquired and damages to the remaining real property.

**§ 102–73.275 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?**

The summary statement must—

(a) Identify the real property and the estate or interest the Federal agency is acquiring;

(b) Identify the buildings, structures, and other improvements the Federal agency considers part of the real property for which just compensation is being offered;

(c) State that the Federal agency based the estimate of just compensation on the Government's estimate of the property's fair market value. If only part of a property or less than a full interest is being acquired, Federal agencies must explain how they determined the just compensation for it; and

(d) State that the Government's estimate of just compensation is at least as much as the property's approved appraisal value.

**§ 102–73.280 Where can Federal agencies find guidance on how to appraise the value of properties being acquired by the Federal Government?**

The Interagency Land Acquisition Conference has developed, promulgated, and adopted the Uniform Appraisal Standards for Federal Land Acquisitions, sometimes referred to as the "Yellow Book." The Interagency Land Acquisition Conference, established on November 27, 1968, by invitation of the Attorney General, is a voluntary organization composed of the many Federal agencies engaged in the acquisition of real estate for public uses. The "Yellow Book" is published by the Appraisal Institute in cooperation with the U.S. Department of Justice and is available in hard copy or on the Department of Justice's internet Web site at <http://www.usdoj.gov/enrd/land-ack/>.

**§ 102–73.285 [Reserved]****§ 102–73.290 Are there any prohibitions when a Federal agency pays "just compensation" to a tenant?**

Yes, Federal agencies must not—

(a) Duplicate any payment to the tenant otherwise authorized by law; and

(b) Pay a tenant unless the landowner disclaims all interests in the tenant's improvements. In consideration for any such payment, the tenant must assign, transfer, and release to the Federal

agency all of its right, title, and interest in the improvements. The tenant may reject such payment under this subpart and obtain payment for its property interests according to other sections of applicable law.

#### Expenses Incidental to Property Transfer

##### § 102–73.295 What property transfer expenses must Federal agencies cover when acquiring real property?

Federal agencies must—

(a) Reimburse property owners for all reasonable expenses actually incurred for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses needed to convey the property to the Federal Government;

(b) Reimburse property owners for all reasonable expenses actually incurred for penalty costs and other charges to prepay any existing, recorded mortgage that a property owner entered into in good faith and that encumbers the real property;

(c) Reimburse property owners for all reasonable expenses actually incurred for the prorated part of any prepaid real property taxes that cover the period after the Federal Government gets title to the property or effective possession of it, whichever is earlier; and

(d) Whenever possible, directly pay the costs identified in this section, so property owners will not have to pay them and then seek reimbursement from the Government.

#### Litigation Expenses

##### § 102–73.300 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

Federal agencies must pay reasonable expenses for attorneys, appraisals, and engineering fees that a property owner incurs because of a condemnation proceeding, if any of the following are true:

(a) The court's final judgment is that the Federal agency cannot acquire the real property by condemnation.

(b) The Federal agency abandons the condemnation proceeding other than under an agreed-on settlement.

(c) The court renders a judgment in the property owner's favor in an inverse condemnation proceeding or the Federal agency agrees to settle such proceeding.

#### Relocation Assistance Policy

##### § 102–73.305 What relocation assistance policy must Federal agencies follow?

Federal agencies, upon approval from GSA, must provide appropriate

relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. 4651–4655, to eligible owners and tenants of property purchased for use by Federal agencies in accordance with the implementing regulations found in 49 CFR part 24. Appropriate relocation assistance means that the Federal agency must pay the displaced person for actual—

(a) Reasonable moving expenses (in moving himself, his family, and business);

(b) Direct losses of tangible personal property as a result of moving or discontinuing a business;

(c) Reasonable expenses in searching for a replacement business or farm; and

(d) Reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000.

■ 4. Revise part 102–74 to read as follows:

#### PART 102–74—FACILITY MANAGEMENT

##### Subpart A—General Provisions

Sec.

102–74.5 What is the scope of this part?

102–74.10 What is the basic facility management policy?

##### Subpart B—Facility Management

102–74.15 What are the facility management responsibilities of occupant agencies?

##### Occupancy Services

102–74.20 What are occupancy services?

102–74.25 What responsibilities do Executive agencies have regarding occupancy services?

102–74.30 What standard in providing occupancy services must Executive agencies follow?

102–74.35 What building services must Executive agencies provide?

##### Concession Services

102–74.40 What are concession services?

102–74.45 When must Federal agencies provide concession services?

102–74.50 Are Federal agencies required to give blind vendors priority in operating vending facilities?

102–74.55 Are vending facilities authorized under the Randolph-Sheppard Act operated by permit or contract?

102–74.60 Are Federal agencies required to give blind vendors priority in operating cafeterias?

102–74.65 Are cafeterias authorized under the Randolph-Sheppard Act operated by permit or contract?

102–74.70 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?

102–74.75 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?

102–74.80 [Reserved]

102–74.85 [Reserved]

102–74.90 [Reserved]

102–74.95 [Reserved]

#### Conservation Program

102–74.100 What are conservation programs?

#### Asset Services

102–74.105 What are asset services?

102–74.110 What asset services must Executive agencies provide?

102–74.115 What standard in providing asset services must Executive agencies follow?

102–74.120 Is a prospectus required to be submitted before emergency alterations can be performed?

102–74.125 Are prospectuses required for reimbursable alteration projects?

102–74.130 When a prospectus is required, can GSA prepare a prospectus for a reimbursable alteration project?

102–74.135 Who selects construction and alteration projects that are to be performed?

102–74.140 On what basis does the Administrator select construction and alteration projects?

102–74.145 What information must a Federal agency submit to GSA after the agency has identified a need for construction or alteration of a public building?

102–74.150 Who submits prospectuses for the construction or alteration of public buildings to the Congressional committees?

#### Energy Conservation

102–74.155 What energy conservation policy must Federal agencies follow in the management of facilities?

102–74.160 What actions must Federal agencies take to promote energy conservation?

102–74.165 What energy standards must Federal agencies follow for existing facilities?

102–74.170 May exceptions to the energy conservation policies in this subpart be granted?

102–74.175 Are Government-leased buildings required to conform with the policies in this subpart?

102–74.180 What illumination levels must Federal agencies maintain on Federal facilities?

102–74.185 What heating and cooling policy must Federal agencies follow in Federal facilities?

102–74.190 Are portable heaters, fans, and other such devices allowed in Government-controlled facilities?

102–74.195 What ventilation policy must Federal agencies follow?

102–74.200 What information are Federal agencies required to report to the Department of Energy (DOE)?

#### Ridesharing

102–74.205 What Federal facility ridesharing policy must Executive agencies follow?

102-74.210 What steps must Executive agencies take to promote ridesharing at Federal facilities?

102-74.215 [Reserved]

102-74.220 [Reserved]

102-74.225 [Reserved]

#### Occupant Emergency Program

102-74.230 Who is responsible for establishing an occupant emergency program?

102-74.235 Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?

102-74.240 What are Federal agencies' occupant emergency responsibilities?

102-74.245 Who makes the decision to activate the Occupant Emergency Organization?

102-74.250 What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?

102-74.255 How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion, or the discovery of an explosive device (not including a bomb threat)?

102-74.260 What action must the Designated Official initiate when there is advance notice of an emergency?

#### Parking Facilities

102-74.265 Who must provide for the regulation and policing of parking facilities?

102-74.270 Are vehicles required to display parking permits in parking facilities?

102-74.275 May Federal agencies authorize lessors or parking management contractors to manage, regulate, and police parking facilities?

102-74.280 Are privately owned vehicles converted for propane carburetion permitted in underground parking facilities?

102-74.285 How must Federal agencies assign priority to parking spaces in controlled areas?

102-74.290 May Federal agencies allow employees to use parking spaces not required for official needs?

102-74.295 Who determines the number of employee parking spaces for each facility?

102-74.300 How must space available for employee parking be allocated among occupant agencies?

102-74.305 How must Federal agencies assign available parking spaces to their employees?

102-74.310 What measures must Federal agencies take to improve the utilization of parking facilities?

#### Smoking

102-74.315 What is the smoking policy for Federal facilities?

102-74.320 Are there any exceptions to this smoking policy for Federal facilities?

102-74.325 Who has the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas?

102-74.330 Who must evaluate the need to restrict smoking at doorways and in courtyards?

102-74.335 Who is responsible for monitoring and controlling areas designated for smoking and identifying these areas with proper signage?

102-74.340 Who is responsible for signs on or near building entrance doors?

102-74.345 Does the smoking policy in this part apply to the judicial branch?

102-74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?

#### Accident and Fire Prevention

102-74.355 With what accident and fire prevention standards must Federal facilities comply?

102-74.360 What are the specific accident and fire prevention responsibilities of occupant agencies?

#### Subpart C—Conduct on Federal Property

##### Applicability

102-74.365 To whom does this subpart apply?

##### Inspection

102-74.370 What items are subject to inspection by Federal agencies?

##### Admission to Property

102-74.375 What is the policy on admitting persons to Government property?

##### Preservation of Property

102-74.380 What is the policy concerning the preservation of property?

##### Conformity With Signs and Directions

102-74.385 What is the policy concerning conformity with official signs and directions?

##### Disturbances

102-74.390 What is the policy concerning disturbances?

##### Gambling

102-74.395 What is the policy concerning gambling?

##### Narcotics and Other Drugs

102-74.400 What is the policy concerning the possession and use of narcotics and other drugs?

##### Alcoholic Beverages

102-74.405 What is the policy concerning the use of alcoholic beverages?

##### Soliciting, Vending and Debt Collection

102-74.410 What is the policy concerning soliciting, vending and debt collection?

##### Posting and Distributing Materials

102-74.415 What is the policy for posting and distributing materials?

##### Photographs for News, Advertising or Commercial Purposes

102-74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

#### Dogs and Other Animals

102-74.425 What is the policy concerning dogs and other animals on Federal property?

#### Breastfeeding

102-74.426 May a woman breastfeed her child in a Federal building or on Federal property?

#### Vehicular and Pedestrian Traffic

102-74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

#### Explosives

102-74.435 What is the policy concerning explosives on Federal property?

#### Weapons

102-74.440 What is the policy concerning weapons on Federal property?

#### Nondiscrimination

102-74.445 What is the policy concerning discrimination on Federal property?

#### Penalties

102-74.450 What are the penalties for violating any rule or regulation in this subpart?

#### Impact on Other Laws or Regulations

102-74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

#### Subpart D—Occasional Use of Public Buildings

102-74.460 What is the scope of this subpart?

#### Application for Permit

102-74.465 Is a person or organization that wishes to use a public area required to apply for a permit from a Federal agency?

102-74.470 What information must persons or organizations submit so that Federal agencies may consider their application for a permit?

102-74.475 If an applicant proposes to use a public area to solicit funds, is the applicant required to make a certification?

#### Permits

102-74.480 How many days does a Federal agency have to issue a permit following receipt of a completed application?

102-74.485 Is there any limitation on the length of time of a permit?

102-74.490 What if more than one permit is requested for the same area and time?

102-74.495 If a permit involves demonstrations or activities that may lead to civil disturbances, what action must a Federal agency take before approving such a permit application?

#### Disapproval of Applications or Cancellation of Permits

102-74.500 Can Federal agencies disapprove permit applications or cancel issued permits?

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application or canceling an issued permit?

#### Appeals

- 102-74.510 How may the disapproval of a permit application or cancellation of an issued permit be appealed?
- 102-74.515 Will the affected person or organization and the Federal agency buildings manager have an opportunity to state their positions on the issues?
- 102-74.520 How much time does the Regional Officer have to affirm or reverse the Federal agency buildings manager's decision after receiving the notification of appeal from the affected person or organization?

#### Schedule of Use

- 102-74.525 May Federal agencies reserve time periods for the use of public areas for official Government business or for maintenance, repair, and construction?

#### Hours of Use

- 102-74.530 When may public areas be used?

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- 102-74.535 What items may Federal agencies provide to permittees free of charge?
- 102-74.540 What are the items for which permittees must reimburse Federal agencies?
- 102-74.545 May permittees make alterations to the public areas?
- 102-74.550 What items are permittees responsible for furnishing?

#### Conduct

- 102-74.555 What rules of conduct must all permittees observe while on Federal property?

#### Non-affiliation With the Government

- 102-74.560 May Federal agencies advise the public of the presence of any permittees and their non-affiliation with the Federal Government?

#### Subpart E—Installing, Repairing, and Replacing Sidewalks

- 102-74.565 What is the scope of this subpart?
- 102-74.570 Are State and local governments required to fund the cost of installing, repairing, and replacing sidewalks?
- 102-74.575 How do Federal agencies arrange for work on sidewalks?
- 102-74.580 Who decides when to replace a sidewalk?

#### Subpart F—Telework

- 102-74.585 What Federal facility telework policy must Executive agencies follow?
- 102-74.590 What steps must agencies take to implement these laws and policies?
- 102-74.595 How can agencies obtain guidance, assistance, and oversight regarding alternative workplace arrangements from GSA?
- 102-74.600 Should Federal agencies utilize telework centers?
- Appendix to Part 102-74—Rules and Regulations Governing Conduct on Federal Property

**Authority:** 40 U.S.C. 121(c); Executive Order 12191, 45 FR 7997, 3 CFR, 1980 Comp., p 138.

#### Subpart A—General Provisions

##### § 102-74.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

##### § 102-74.10 What is the basic facility management policy?

Executive agencies must manage, operate and maintain Government-owned and leased buildings in a manner that provides for quality space and services consistent with their operational needs and accomplishes overall Government objectives. The management, operation and maintenance of buildings and building systems must—

- (a) Be cost effective and energy efficient;
- (b) Be adequate to meet the agencies' missions;
- (c) Meet nationally recognized standards; and
- (d) Be at an appropriate level to maintain and preserve the physical plant assets, consistent with available funding.

#### Subpart B—Facility Management

##### § 102-74.15 What are the facility management responsibilities of occupant agencies?

Occupants of facilities under the custody and control of Federal agencies must—

- (a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;
- (b) Promptly report all crimes and suspicious circumstances occurring on Federally controlled property first to the regional Federal Protective Service, and as appropriate, the local responding law enforcement authority;
- (c) Provide training to employees regarding protection and responses to emergency situations; and
- (d) Make recommendations for improving the effectiveness of protection in Federal facilities.

#### Occupancy Services

##### § 102-74.20 What are occupancy services?

- Occupancy services are—
- (a) Building services (see § 102-74.35);
  - (b) Concession services (see § 102-74.40); and
  - (c) Conservation programs (see § 102-74.100).

##### § 102-74.25 What responsibilities do Executive agencies have regarding occupancy services?

Executive agencies, upon approval from GSA, must manage, administer and enforce the requirements of agreements (such as Memoranda of Understanding) and contracts that provide for the delivery of occupancy services.

##### § 102-74.30 What standard in providing occupancy services must Executive agencies follow?

Executive agencies must provide occupancy services that substantially conform to nationally recognized standards. As needed, Executive agencies may adopt other standards for buildings and services in Federally controlled facilities to conform to statutory requirements and to implement cost-reduction efforts.

##### § 102-74.35 What building services must Executive agencies provide?

Executive agencies, upon approval from GSA, must provide—

- (a) Building services such as custodial, solid waste management (including recycling), heating and cooling, landscaping and grounds maintenance, tenant alterations, minor repairs, building maintenance, integrated pest management, signage, parking, and snow removal, at appropriate levels to support Federal agency missions; and
- (b) Arrangements for raising and lowering the United States flags at appropriate times. In addition, agencies must display P.O.W. and M.I.A. flags at locations specified in 36 U.S.C. 902 on P.O.W./M.I.A. flag display days.

#### Concession Services

##### § 102-74.40 What are concession services?

Concession services are any food or snack services provided by a Randolph-Sheppard Act vendor, commercial contractor or nonprofit organization (see definition in § 102-71.20 of this chapter), in vending facilities such as—

- (a) Vending machines;
- (b) Sundry facilities;
- (c) Prepackaged facilities;
- (d) Snack bars; and
- (e) Cafeterias.

##### § 102-74.45 When must Federal agencies provide concession services?

Federal agencies, upon approval from GSA, must provide concession services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. Prior to establishing concessions, Federal agencies must ensure that—

(a) The proposed concession will be established and operated in conformance with applicable policies, safety, health and sanitation codes, laws, regulations, etc., and will not contravene the terms of any lease or other contractual arrangement; and

(b) Sufficient funds are legally available to cover all costs for which the Government may be responsible.

**§ 102–74.50 Are Federal agencies required to give blind vendors priority in operating vending facilities?**

With certain exceptions, the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) requires that blind persons licensed by a State licensing agency under the provisions of the Randolph-Sheppard Act be authorized to operate vending facilities on Federal property, including leased buildings. The Department of Education (ED) is responsible for the administration of the Randolph-Sheppard Act as set forth at 34 CFR part 395. The ED designates individual State licensing agencies with program administration responsibility. The Randolph-Sheppard Act and its implementing regulations require that Federal property managers give priority to and notify the State licensing agencies in writing of any opportunity.

**§ 102–74.55 Are vending facilities authorized under the Randolph-Sheppard Act operated by permit or contract?**

Vending facilities are authorized by permit. As set forth in 34 CFR part 395, the Federal property manager approves and signs State licensing agency permits that authorize States to license blind vendors to operate vending facilities (including vending machines) on Federal property.

**§ 102–74.60 Are Federal agencies required to give blind vendors priority in operating cafeterias?**

Yes. Federal agencies are required to give Randolph-Sheppard vendors priority in the operation of cafeterias when the State licensing agency is in the competitive range as set forth at 34 CFR part 395.

**§ 102–74.65 Are cafeterias authorized under the Randolph-Sheppard Act operated by permit or contract?**

They are operated by contract. As set forth at 34 CFR part 395, the Federal property manager contracts with the State licensing agency to license blind vendors to operate cafeterias on Federal property.

**§ 102–74.70 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?**

Commercial vendors and nonprofit organizations must operate vending facilities, including cafeterias, under a contractual arrangement with Federal agencies.

**§ 102–74.75 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?**

No. Section 636 of Public Law 104–52 prohibits the sale of tobacco products in vending machines in Government-owned and leased space. The Administrator of GSA or the head of an Agency may designate areas not subject to the prohibition, if minors are prohibited and reports are made to the appropriate committees of Congress.

**§ 102–74.80 [Reserved]**

**§ 102–74.85 [Reserved]**

**§ 102–74.90 [Reserved]**

**§ 102–74.95 [Reserved]**

**Conservation Programs**

**§ 102–74.100 What are conservation programs?**

Conservation programs are programs that improve energy and water efficiency and promote the use of solar and other renewable energy. These programs must promote and maintain an effective source reduction activity (reducing consumption of resources such as energy, water, and paper), resource recovery activity (obtaining materials from the waste stream that can be recycled into new products), and reuse activity (reusing same product before disposition, such as reusing unneeded memos for scratch paper).

**Asset Services**

**§ 102–74.105 What are asset services?**

Asset services include repairs (other than those minor repairs identified in § 102–74.35(a)), alterations and modernizations for real property assets. Typically, these are the types of repairs and alterations necessary to preserve or enhance the value of the real property asset.

**§ 102–74.110 What asset services must Executive agencies provide?**

Executive agencies, upon approval from GSA, must provide asset services such as repairs (in addition to those minor repairs identified in § 102–74.35(a)), alterations, and modernizations for real property assets. For repairs and alterations projects for which the estimated cost exceeds the prospectus threshold, Federal agencies

must follow the prospectus submission and approval policy identified in this part and part 102–73 of this chapter.

**§ 102–74.115 What standard in providing asset services must Executive agencies follow?**

Executive agencies must provide asset services that maintain continuity of Government operations, continue efficient building operations, extend the useful life of buildings and related building systems, and provide a quality workplace environment that enhances employee productivity.

**§ 102–74.120 Is a prospectus required to be submitted before emergency alterations can be performed?**

No. A prospectus does not need to be submitted before emergency alterations are performed, but GSA must submit a prospectus as soon as possible after the emergency. Federal agencies must immediately alter a building if the alteration protects people, buildings, or equipment, saves lives, and/or avoids further property damage. Federal agencies can take these actions in an emergency before GSA submits a prospectus on the alterations to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure.

**§ 102–74.125 Are prospectuses required for reimbursable alteration projects?**

A project that is to be financed in whole or in part from funds appropriated to the requesting agency may be performed without a prospectus if—

(a) Payment is made from agency appropriations that are not subject to 40 U.S.C. 3307; and

(b) GSA's portion of the cost, if any, does not exceed the prospectus threshold.

**§ 102–74.130 When a prospectus is required, can GSA prepare a prospectus for a reimbursable alteration project?**

Yes, if requested by a Federal agency, GSA will prepare a prospectus for a reimbursable alteration project.

**§ 102–74.135 Who selects construction and alteration projects that are to be performed?**

The Administrator of General Services selects construction and alteration projects to be performed.

**§ 102–74.140 On what basis does the Administrator select construction and alteration projects?**

The Administrator selects projects based on a continuing investigation and survey of the public building needs of the Federal Government. These projects must be equitably distributed

throughout the United States, with due consideration given to each project's comparative urgency.

**§ 102-74.145 What information must a Federal agency submit to GSA after the agency has identified a need for construction or alteration of a public building?**

Federal agencies identifying a need for construction or alteration of a public building must provide information, such as a description of the work, location, estimated maximum cost, and justification to the Administrator of General Services.

**§ 102-74.150 Who submits prospectuses for the construction or alteration of public buildings to the Congressional committees?**

The Administrator of General Services must submit prospectuses for public building construction or alteration projects to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for approval.

**Energy Conservation**

**§ 102-74.155 What energy conservation policy must Federal agencies follow in the management of facilities?**

Federal agencies must—

(a) Comply with the energy conservation guidelines in 10 CFR part 436 (Federal Energy Management and Planning Programs); and

(b) Observe the energy conservation policies cited in this part.

**§ 102-74.160 What actions must Federal agencies take to promote energy conservation?**

Federal agencies must—

(a) Turn off lights and equipment when not needed;

(b) Not block or impede ventilation; and

(c) Keep windows and other building accesses closed during the heating and cooling seasons.

**§ 102-74.165 What energy standards must Federal agencies follow for existing facilities?**

Existing Federal facilities must meet the energy standards prescribed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America in ASHRAE/IES Standard 90A-1980, as amended by the Department of Energy. Federal agencies must apply these energy standards where they can be achieved through life cycle, cost effective actions.

**§ 102-74.170 May exceptions to the energy conservation policies in this subpart be granted?**

Yes, the Federal agency buildings manager may grant exceptions to the foregoing policies in this subpart to enable agencies to accomplish their missions more effectively and efficiently.

**§ 102-74.175 Are Government-leased buildings required to conform with the policies in this subpart?**

Yes, all new lease contracts must be in conformance with the policies prescribed in this subpart. Federal agencies must administer existing lease contracts in accordance with these policies to the maximum extent feasible.

**§ 102-74.180 What illumination levels must Federal agencies maintain on Federal facilities?**

Except where special circumstances exist, Federal agencies must maintain illumination levels at—

(a) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level, during working hours (for visually difficult or critical tasks, additional lighting may be authorized by the Federal agency buildings manager);

(b) 30 foot-candles in work areas during working hours, measured at 30 inches above floor level;

(c) 10 foot-candles, but not less than 1 foot-candle, in non-work areas, during working hours (normally this will require levels of 5 foot-candles at elevator boarding areas, minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 10 foot-candles in storage areas); and

(d) Levels essential for safety and security purposes, including exit signs and exterior lights.

**§ 102-74.185 What heating and cooling policy must Federal agencies follow in Federal facilities?**

Within the limitations of the building systems, Federal agencies must—

(a) Operate heating and cooling systems in the most overall energy efficient and economical manner;

(b) Maintain temperatures to maximize customer satisfaction by conforming to local commercial equivalent temperature levels and operating practices;

(c) Set heating temperatures no higher than 55 degrees Fahrenheit during non-working hours;

(d) Not provide air-conditioning during non-working hours, except as necessary to return space temperatures

to a suitable level for the beginning of working hours;

(e) Not permit reheating, humidification and simultaneous heating and cooling; and

(f) Operate building systems as necessary during extreme weather conditions to protect the physical condition of the building.

**§ 102-74.190 Are portable heaters, fans and other such devices allowed in Government-controlled facilities?**

Federal agencies are prohibited from operating portable heaters, fans, and other such devices in Government-controlled facilities unless authorized by the Federal agency buildings manager.

**§ 102-74.195 What ventilation policy must Federal agencies follow?**

During working hours in periods of heating and cooling, Federal agencies must provide ventilation in accordance with ASHRAE Standard 62, Ventilation for Acceptable Indoor Air Quality, where physically practical. Where not physically practical, Federal agencies must provide the maximum allowable amount of ventilation during periods of heating and cooling and pursue opportunities to increase ventilation up to current standards. ASHRAE Standard 62 is available from ASHRAE Publications Sales, 1791 Tullie Circle NE, Atlanta, GA 30329-2305.

**§ 102-74.200 What information are Federal agencies required to report to the Department of Energy (DOE)?**

Federal agencies, upon approval of GSA, must report to the DOE the energy consumption in buildings, facilities, vehicles, and equipment within 45 calendar days after the end of each quarter as specified in the DOE Federal Energy Usage Report DOE F 6200.2 Instructions.

**Ridesharing**

**§ 102-74.205 What Federal facility ridesharing policy must Executive agencies follow?**

(a) In accordance with Executive Order 12191, "Federal Facility Ridesharing Program" (3 CFR, 1980 Comp., p. 138), Executive agencies must actively promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities to conserve energy, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work.

(b) In accordance with the Federal Employees Clean Air Incentives Act (Public Law 103-172), the Federal

Government is required to take steps to improve the air quality, and to reduce traffic congestion by providing for the establishment of programs that encourage Federal employees to commute to work by means other than single-occupancy motor vehicles.

(c) In accordance with the Transportation Equity Act for the 21st Century (Public Law 105-178), employers, including the Federal Government, are to offer employees transportation fringe benefits.

**§ 102-74.210 What steps must Executive agencies take to promote ridesharing at Federal facilities?**

(a) Under Executive Order 12191, "Federal Facility Ridesharing Program," agencies shall—

(1) Establish an annual ridesharing goal for each facility; and

(2) Cooperate with State and local ridesharing agencies where such agencies exist.

(b) Under the Federal Employees Clean Air Incentives Act (Public Law 103-172), agencies shall—

(1) Issue transit passes or similar vouchers to exchange for transit passes;

(2) Furnish space, facilities, and services to bicyclists;

(3) Provide non-monetary incentives as provided by other provisions of law or other authority; and

(4) Submit biennially to GSA (as directed in House of Representatives Report 103-356, dated November 10, 1993) a report that covers—

(i) Agency programs offered under Public law 103-172;

(ii) Description of each program;

(iii) Extent of employee participation in, and costs to the Government associated with, each program;

(iv) Assessment of environmental or other benefits realized from these programs; and

(v) Other matters that may be appropriate under Public Law 103-172.

(c) In accordance with the Transportation Equity Act for the 21st Century, agencies may (in lieu of or in combination with other commuter benefits) provide fringe benefits to qualified commuters, at no cost, by giving them a monthly pretax payroll deduction to support and encourage the use of mass transportation systems.

**§ 102-74.215 [Reserved]**

**§ 102-74.220 [Reserved]**

**§ 102-74.225 [Reserved]**

**Occupant Emergency Program**

**§ 102-74.230 Who is responsible for establishing an occupant emergency program?**

The Designated Official (as defined in § 102-71.20 of this chapter) is responsible for developing, implementing and maintaining an Occupant Emergency Plan (as defined in § 102-71.20 of this chapter). The Designated Official's responsibilities include establishing, staffing and training an Occupant Emergency Organization with agency employees. Federal agencies, upon approval from GSA, must assist in the establishment and maintenance of such plans and organizations.

**§ 102-74.235 Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?**

Yes, all occupant agencies of a facility must fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

**§ 102-74.240 What are Federal agencies' occupant emergency responsibilities?**

Federal agencies, upon approval from GSA, must—

(a) Provide emergency program policy guidance;

(b) Review plans and organizations annually;

(c) Assist in training of personnel;

(d) Otherwise provide for the proper administration of Occupant Emergency Programs (as defined in § 102-71.20 of this chapter);

(e) Solicit the assistance of the lessor in the establishment and implementation of plans in leased space; and

(f) Assist the Occupant Emergency Organization (as defined in § 102-71.20 of this chapter) by providing technical personnel qualified in the operation of utility systems and protective equipment.

**§ 102-74.245 Who makes the decision to activate the Occupant Emergency Organization?**

The decision to activate the Occupant Emergency Organization must be made by the Designated Official, or by the designated alternate official. After normal duty hours, the senior Federal official present must represent the Designated Official or his/her alternates

and must initiate action to cope with emergencies in accordance with the plans.

**§ 102-74.250 What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?**

The Designated Official must make a decision to activate the Occupant Emergency Organization based upon the best available information, including—

(a) An understanding of local tensions;

(b) The sensitivity of target agency(ies);

(c) Previous experience with similar situations;

(d) Advice from the Federal agency buildings manager;

(e) Advice from the appropriate Federal law enforcement official; and

(f) Advice from Federal, State, and local law enforcement agencies.

**§ 102-74.255 How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat)?**

The Designated Official must initiate action to evacuate or relocate occupants in accordance with the plan by sounding the fire alarm system or by other appropriate means when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

**§ 102-74.260 What action must the Designated Official initiate when there is advance notice of an emergency?**

The Designated Official must initiate appropriate action according to the plan when there is advance notice of an emergency.

**Parking Facilities**

**§ 102-74.265 Who must provide for the regulation and policing of parking facilities?**

Federal agencies, upon approval from GSA, must provide for any necessary regulation and policing of parking facilities, which may include—

(a) The issuance of traffic rules and regulations;

(b) The installation of signs and markings for traffic control (Signs and markings must conform with the Manual on Uniform Traffic Control Devices published by the Department of Transportation);

(c) The issuance of citations for parking violations; and

(d) The immobilization or removal of illegally parked vehicles.

**§ 102–74.270 Are vehicles required to display parking permits in parking facilities?**

When the use of parking space is controlled as in § 102–74.265, all privately owned vehicles other than those authorized to use designated visitor or service areas must display a parking permit. This requirement may be waived in parking facilities where the number of available spaces regularly exceeds the demand for such spaces.

**§ 102–74.275 May Federal agencies authorize lessors or parking management contractors to manage, regulate and police parking facilities?**

Yes, Federal agencies, upon approval from GSA, may authorize lessors or parking management contractors to manage, regulate and police parking facilities.

**§ 102–74.280 Are privately owned vehicles converted for propane carburetion permitted in underground parking facilities?**

Federal agencies must not permit privately owned vehicles converted for propane carburetion to enter underground parking facilities unless the owner provides to the occupant agency and the Federal agency buildings manager the installer's certification that the installation methods and equipment comply with National Fire Protection Association (NFPA) Standard No. 58.

**§ 102–74.285 How must Federal agencies assign priority to parking spaces in controlled areas?**

Federal agencies must reserve official parking spaces, in the following order of priority, for—

- (a) Official postal vehicles at buildings containing the U.S. Postal Service's mailing operations;
- (b) Federally owned vehicles used to apprehend criminals, fight fires and handle other emergencies;
- (c) Private vehicles owned by Members of Congress (but not their staffs);
- (d) Private vehicles owned by Federal judges (appointed under Article III of the Constitution), which may be parked in those spaces assigned for the use of the Court, with priority for them set by the Administrative Office of the U.S. Courts;
- (e) Other Federally owned and leased vehicles, including those in motor pools or assigned for general use;
- (f) Service vehicles, vehicles used in child care center operations, and vehicles of patrons and visitors (Federal agencies must allocate parking for disabled visitors whenever an agency's mission requires visitor parking); and
- (g) Private vehicles owned by employees, using spaces not needed for official business.

However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or equitable, taking into account the priority for official parking set forth in this section.

**§ 102–74.290 May Federal agencies allow employees to use parking spaces not required for official needs?**

Yes, Federal agencies may allow employees to use parking spaces not required for official needs.

**§ 102–74.295 Who determines the number of employee parking spaces for each facility?**

The Federal agency buildings manager must determine the total number of spaces available for employee parking. Typically, Federal agencies must make a separate determination for each parking facility. However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or more equitably available.

**§ 102–74.300 How must space available for employee parking be allocated among occupant agencies?**

The Federal agency buildings manager must allocate space available for employee parking among occupant agencies on an equitable basis, such as by allocating such parking in proportion to each agency's share of building space, office space or total employee population, as appropriate. In certain cases, Federal agencies may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper parking allocations among the occupant agencies.

**§ 102–74.305 How must Federal agencies assign available parking spaces to their employees?**

Federal agencies must assign available parking spaces to their employees using the following order of priority:

- (a) Severely disabled employees (see definition in § 102–71.20 of this chapter).
- (b) Executive personnel and persons who work unusual hours.
- (c) Vanpool/carpool vehicles.
- (d) Privately owned vehicles of occupant agency employees that are regularly used for Government business at least 12 days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations.
- (e) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

**§ 102–74.310 What measures must Federal agencies take to improve the utilization of parking facilities?**

Federal agencies must take all feasible measures to improve the utilization of parking facilities, including—

- (a) The conducting of surveys and studies;
- (b) The periodic review of parking space allocations;
- (c) The dissemination of parking information to occupant agencies;
- (d) The implementation of parking incentives that promote ridesharing;
- (e) The use of stack parking practices, where appropriate; and
- (f) The employment of parking management contractors and concessionaires, where appropriate.

**Smoking****§ 102–74.315 What is the smoking policy for Federal facilities?**

Pursuant to Executive Order 13058, "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace" (3 CFR, 1997 Comp., p. 216), it is the policy of the Executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented or leased by the Executive branch of the Federal Government, and in any outdoor areas under Executive branch control in front of air intake ducts.

**§ 102–74.320 Are there any exceptions to this smoking policy for Federal facilities?**

Yes, this smoking policy does not apply in—

- (a) Designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials must not require workers to enter such areas during business hours while smoking is ongoing;
- (b) Any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;
- (c) Portions of Federally owned buildings leased, rented or otherwise provided in their entirety to non-Federal parties;
- (d) Places of employment in the private sector or in other non-Federal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and

(e) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

**§ 102–74.325 Who has the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas?**

Agency heads have the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas. In exercising this responsibility, agency heads will give appropriate consideration to the views of the employees affected and/or their representatives and are to take into consideration the health issues involved. Nothing in this section precludes an agency from establishing more stringent guidelines. Agencies in multi-tenant buildings are encouraged to work together to identify designated smoking areas.

**§ 102–74.330 Who must evaluate the need to restrict smoking at doorways and in courtyards?**

Agency heads must evaluate the need to restrict smoking at doorways and in courtyards under Executive branch control to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

**§ 102–74.335 Who is responsible for monitoring and controlling areas designated for smoking and for identifying these areas with proper signage?**

Agency heads are responsible for monitoring and controlling areas designated for smoking and identifying these areas with proper signage. Suitable uniform signs reading “Designated Smoking Area” must be furnished and installed by the occupant agency.

**§ 102–74.340 Who is responsible for signs on or near building entrance doors?**

Federal agency buildings managers must furnish and install suitable, uniform signs reading “No Smoking Except in Designated Areas” on or near entrance doors of buildings subject to this section. It is not necessary to display a sign in every room of each building.

**§ 102–74.345 Does the smoking policy in this part apply to the Judicial branch?**

This smoking policy applies to the Judicial branch when it occupies space

in buildings controlled by the Executive branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as indicated in § 102–74.320(e).

**§ 102–74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?**

Yes. Where there is an exclusive representative for the employees, Federal agencies must meet their obligations under the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*) prior to implementing this section. In all other cases, agencies may consult directly with employees.

**Accident and Fire Prevention**

**§ 102–74.355 With what accident and fire prevention standards must Federal facilities comply?**

To the maximum extent feasible, Federal agencies must manage facilities in accordance with the accident and fire prevention requirements identified in § 102–80.80 of this chapter.

**§ 102–74.360 What are the specific accident and fire prevention responsibilities of occupant agencies?**

- Each occupant agency must—
- (a) Participate in at least one fire drill per year;
  - (b) Maintain a neat and orderly facility to minimize the risk of accidental injuries and fires;
  - (c) Keep all exits, accesses to exits and accesses to emergency equipment clear at all times;
  - (d) Not bring hazardous, explosive or combustible materials into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided;
  - (e) Use only draperies, curtains or other hanging materials that are made of non-combustible or flame-resistant fabric;
  - (f) Use only freestanding partitions and space dividers that are limited combustible, and fabric coverings that are flame resistant;
  - (g) Cooperate with GSA to develop and maintain fire prevention programs that provide the maximum safety for the occupants;
  - (h) Train employees to use protective equipment and educate employees to take appropriate fire safety precautions in their work;
  - (i) Keep facilities in the safest condition practicable, and conduct

periodic inspections in accordance with Executive Order 12196 and 29 CFR part 1960;

(j) Immediately report accidents involving personal injury or property damage, which result from building system or maintenance deficiencies, to the Federal agency building manager; and

(k) Appoint a safety, health and fire protection liaison to represent the occupant agency with GSA.

**Subpart C—Conduct on Federal Property**

**Applicability**

**§ 102–74.365 To whom does this subpart apply?**

The rules in this subpart apply to all property under the authority of GSA and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to this part at each public entrance to each Federal facility.

**Inspection**

**§ 102–74.370 What items are subject to inspection by Federal agencies?**

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

**Admission to Property**

**§ 102–74.375 What is the policy on admitting persons to Government property?**

- Federal agencies must—
- (a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public;
  - (b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the

property or the area. The designated official is defined in § 102-71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

### Preservation of Property

#### § 102-74.380 What is the policy concerning the preservation of property?

All persons entering in or on Federal property are prohibited from—

- (a) Improperly disposing of rubbish on property;
- (b) Willfully destroying or damaging property;
- (c) Stealing property;
- (d) Creating any hazard on property to persons or things; or
- (e) Throwing articles of any kind from or at a building or climbing upon statues, fountains or any part of the building.

### Conformity With Signs and Directions

#### § 102-74.385 What is the policy concerning conformity with official signs and directions?

Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

### Disturbances

#### § 102-74.390 What is the policy concerning disturbances?

All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—

- (a) Creates loud or unusual noise or a nuisance;
- (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
- (c) Otherwise impedes or disrupts the performance of official duties by Government employees; or
- (d) Prevents the general public from obtaining the administrative services

provided on the property in a timely manner.

### Gambling

#### § 102-74.395 What is the policy concerning gambling?

(a) Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

- (1) Participating in games for money or other personal property;
- (2) Operating gambling devices;
- (3) Conducting a lottery or pool; or
- (4) Selling or purchasing numbers tickets.

(b) This provision is not intended to prohibit prize drawings for personal property at otherwise permitted functions on Federal property, provided that the game or drawing does not constitute gambling per se. Gambling per se means a game of chance where the participant risks something of value for the chance to gain or win a prize.

### Narcotics and Other Drugs

#### § 102-74.400 What is the policy concerning the possession and use of narcotics and other drugs?

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

- (a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or
- (b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

### Alcoholic Beverages

#### § 102-74.405 What is the policy concerning the use of alcoholic beverages?

Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

### Soliciting, Vending and Debt Collection

#### § 102-74.410 What is the policy concerning soliciting, vending and debt collection?

All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for—

- (a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled "Solicitation Of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations," and sponsored or approved by the occupant agencies;
- (b) Concessions or personal notices posted by employees on authorized bulletin boards;
- (c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95-454);
- (d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under 40 U.S.C. 581(h). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;
- (e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and
- (f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

### Posting and Distributing Materials

#### § 102-74.415 What is the policy for posting and distributing materials?

All persons entering in or on Federal property are prohibited from—

- (a) Distributing free samples of tobacco products in or around Federal buildings, as mandated by Section 636 of Public Law 104-52;
- (b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102-74.410, or when these displays are conducted as part of authorized Government activities; and
- (c) Distributing materials, such as pamphlets, handbills or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102-71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this

section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

### Photographs for News, Advertising or Commercial Purposes

#### § 102–74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

### Dogs and Other Animals

#### § 102–74.425 What is the policy concerning dogs and other animals on Federal property?

No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

### Breastfeeding

#### § 102–74.426 May a woman breastfeed her child in a Federal building or on Federal property?

Yes. Public Law 108–199, Section 629, Division F, Title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

### Vehicular and Pedestrian Traffic

#### § 102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

### Explosives

#### § 102–74.435 What is the policy concerning explosives on Federal property?

No person entering or while on Federal property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

### Weapons

#### § 102–74.440 What is the policy concerning weapons on Federal property?

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by 18 U.S.C. 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

### Nondiscrimination

#### § 102–74.445 What is the policy concerning discrimination on Federal property?

Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

### Penalties

#### § 102–74.450 What are the penalties for violating any rule or regulation in this subpart?

A person found guilty of violating any rule or regulation in this subpart while on any property under the charge and control of GSA shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

### Impact on Other Laws or Regulations

#### § 102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

### Subpart D—Occasional Use of Public Buildings

#### § 102–74.460 What is the scope of this subpart?

This subpart establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by 40 U.S.C. 581(h)(2).

### Application for Permit

#### § 102–74.465 Is a person or organization that wishes to use a public area required to apply for a permit from a Federal agency?

Yes, any person or organization wishing to use a public area must file an application for a permit from the Federal agency buildings manager.

#### § 102–74.470 What information must persons or organizations submit so that Federal agencies may consider their application for a permit?

Applicants must submit the following information:

(a) Their full names, mailing addresses, and telephone numbers.

(b) The organization sponsoring the proposed activity.

(c) The individual(s) responsible for supervising the activity.

(d) Documentation showing that the applicant has authority to represent the sponsoring organization.

(e) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

#### § 102–74.475 If an applicant proposes to use a public area to solicit funds, is the applicant required to make a certification?

Yes, if an applicant proposes to use a public area to solicit funds, the applicant must certify, in writing, that—

(a) The applicant is a representative of and will be soliciting funds for the sole benefit of a religion or religious group; or

(b) The applicant's organization has received an official ruling of tax-exempt status from the Internal Revenue Service under 26 U.S.C. 501; or, alternatively, that an application for such a ruling is still pending.

#### Permits

##### **§ 102-74.480 How many days does a Federal agency have to issue a permit following receipt of a completed application?**

Federal agencies must issue permits within 10 working days following the receipt of the completed applications, unless the permit is disapproved in accordance with § 102-74.500.

##### **§ 102-74.485 Is there any limitation on the length of time of a permit?**

Yes, a permit may not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the Regional Officer (as defined in § 102-71.20 of this chapter). After the expiration of a permit, Federal agencies may issue a new permit upon submission of a new application. In such a case, applicants may incorporate by reference all required information filed with the prior application.

##### **§ 102-74.490 What if more than one permit is requested for the same area and time?**

Federal agencies will issue permits on a first-come, first-served, basis when more than one permit is requested for the same area and times.

##### **§ 102-74.495 If a permit involves demonstrations or activities that may lead to civil disturbances, what action must a Federal agency take before approving such a permit application?**

Before approving a permit application, Federal agencies must coordinate with their law enforcement organization if a permit involves demonstrations or activities that may lead to civil disturbances.

#### Disapproval of Applications or Cancellation of Permits

##### **§ 102-74.500 Can Federal agencies disapprove permit applications or cancel issued permits?**

Yes, Federal agencies may disapprove any permit application or cancel an issued permit if—

(a) The applicant has failed to submit all information required under §§ 102-74.470 and 102-74.475, or has falsified such information;

(b) The proposed use is a commercial activity as defined in § 102-71.20 of this chapter;

(c) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property;

(d) The proposed use is intended to influence or impede any pending judicial proceeding;

(e) The proposed use is obscene within the meaning of obscenity as defined in 18 U.S.C. 1461-65; or

(f) The proposed use violates the prohibition against political solicitations in 18 U.S.C. 607.

##### **§ 102-74.505 What action must Federal agencies take after disapproving an application or canceling an issued permit?**

Upon disapproving an application or canceling a permit, Federal agencies must promptly—

(a) Notify the applicant or permittee of the reasons for the action; and

(b) Inform the applicant or permittee of his/her appeal rights under § 102-74.510.

#### Appeals

##### **§ 102-74.510 How may the disapproval of a permit application or cancellation of an issued permit be appealed?**

A person or organization may appeal the disapproval of an application or cancellation of an issued permit by notifying the Regional Officer (as defined in § 102-71.20 of this chapter), in writing, of the intent to appeal within 5 calendar days of the notification of disapproval or cancellation.

##### **§ 102-74.515 Will the affected person or organization and the Federal agency buildings manager have an opportunity to state their positions on the issues?**

Yes, during the appeal process, the affected person or organization and the Federal agency buildings manager will have an opportunity to state their positions on the issues, both verbally and in writing.

##### **§ 102-74.520 How much time does the Regional Officer have to affirm or reverse the Federal agency buildings manager's decision after receiving the notification of appeal from the affected person or organization?**

The Regional Officer must affirm or reverse the Federal agency buildings manager's decision, based on the information submitted, within 10 calendar days of the date on which the Regional Officer received notification of the appeal. If the decision is not rendered within 10 days, the application will be considered to be approved or the permit validly issued. The Regional Officer will promptly notify the applicant or permittee and the

buildings manager of the decision and the reasons therefor.

#### Schedule of Use

##### **§ 102-74.525 May Federal agencies reserve time periods for the use of public areas for official Government business or for maintenance, repair and construction?**

Yes, Federal agencies may reserve certain time periods for use of public areas—

(a) For official Government business; or

(b) For maintenance, repair, and construction.

#### Hours of Use

##### **§ 102-74.530 When may public areas be used?**

Permittees may use public areas during or after regular working hours of Federal agencies, provided that such uses will not interfere with Government business. When public areas are used by permittees after normal working hours, Federal agencies must lock, barricade or identify by signs, as appropriate, all adjacent areas not approved for such use to restrict permittees' activities to approved areas.

#### Services and Costs

##### **§ 102-74.535 What items may Federal agencies provide to permittees free of charge?**

Federal agencies may provide to permittees at no cost—

(a) Space; and

(b) Services normally provided at the building in question during normal hours of building operation, such as security, cleaning, heating, ventilation, and air-conditioning. The Regional Officer must approve an applicant's request to provide its own services, such as security and cleaning, prior to permit approval.

##### **§ 102-74.540 What are the items for which permittees must reimburse Federal agencies?**

Permittees must reimburse Federal agencies for services over and above those normally provided during normal business hours. Federal agencies may provide the services free of charge if the cost is insignificant and if it is in the public interest.

##### **§ 102-74.545 May permittees make alterations to the public areas?**

Permittees must not make alterations to public areas, except with the prior written approval of the Federal agency buildings manager. Federal agencies must not approve such alterations unless the Federal agency determines that the proposed alterations to a building should be made to encourage

and aid in the proposed use. Permittees making alterations must ensure the safety of users and prevent damage to property.

**§ 102-74.550 What items are permittees responsible for furnishing?**

Permittees are responsible for furnishing items such as tickets, audio-visual equipment, and other items that are necessary for the proposed use.

**Conduct**

**§ 102-74.555 What rules of conduct must all permittees observe while on Federal property?**

Permittees are subject to all rules and regulations governing conduct on Federal property as set forth in subpart C of this part. In addition, a permittee must—

- (a) Not misrepresent his or her identity to the public;
- (b) Not conduct any activities in a misleading or fraudulent manner;
- (c) Not discriminate on the basis of race, creed, religion, age, color, disability, sex, or national origin in conducting activities;
- (d) Not distribute any item, nor post or otherwise affix any item, for which prior written approval under § 102-74.415 has not been obtained;
- (e) Not leave leaflets or other materials unattended on the property;
- (f) Not engage in activities that would interfere with the preferences afforded blind licensees under the Randolph-Sheppard Act (20 U.S.C. 107); and
- (g) Display identification badges while on Federal property, if engaging in the solicitation of funds as authorized by § 102-74.475. Each badge must indicate the permittee's name, address, telephone number, and organization.

**Non-affiliation With the Government**

**§ 102-74.560 May Federal agencies advise the public of the presence of any permittees and their non-affiliation with the Federal Government?**

Yes, Federal agencies reserve the right to advise the public through signs or announcements of the presence of any permittees and of their non-affiliation with the Federal Government.

**Subpart E—Installing, Repairing, and Replacing Sidewalks**

**§ 102-74.565 What is the scope of this subpart?**

In accordance with 40 U.S.C. 589, Federal agencies must comply with the real property policies in this subpart governing the installation, repair and replacement of sidewalks around buildings, installations, properties, or grounds under the control of Executive

agencies and owned by the United States.

**§ 102-74.570 Are State and local governments required to fund the cost of installing, repairing, and replacing sidewalks?**

No, the Federal Government must fund the cost of installing, repairing, and replacing sidewalks. Funds appropriated to the agency for installation, repair, and maintenance, generally, must be available for expenditure to accomplish the purposes of this subpart.

**§ 102-74.575 How do Federal agencies arrange for work on sidewalks?**

Upon approval from GSA, Federal agencies may—

- (a) Authorize the appropriate State or local government to install, repair and replace sidewalks, or arrange for this work, and reimburse them for this work; or
- (b) Contract or otherwise arrange and pay directly for installing, repairing and/or replacing sidewalks.

**§ 102-74.580 Who decides when to replace a sidewalk?**

Federal agencies, giving due consideration to State and local standards and specifications for sidewalks, decide when to install, repair or replace a sidewalk. However, Federal agencies may prescribe other standards and specifications for sidewalks whenever necessary to achieve architectural harmony and maintain facility security.

**Subpart F—Telework**

**§ 102-74.585 What Federal facility telework policy must Executive agencies follow?**

Executive agencies must follow these telework policies:

- (a) In accordance with Section 359 of Public Law 106-346, each Executive agency must establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance. Public 106-346 became effective on October 23, 2000, and required the Director of the Office of Personnel Management (OPM) to ensure the application and implementation of Section 359 to 25 percent of the Federal workforce by April 2001, and to an additional 25 percent of such workforce each year thereafter. Thus, the law provides that its requirements must be applied to 100 percent of the Federal workforce by April 2004.
- (b) In accordance with 40 U.S.C. 587, when considering whether to acquire

any space, quarters, buildings, or other facilities for use by employees of any Executive agency, the head of that agency shall consider whether the need for the facilities can be met using alternative workplace arrangements.

**§ 102-74.590 What steps must agencies take to implement these laws and policies?**

(a) As interpreted by OPM Memorandum to agencies (February 9, 2001), Public Law 106-346 instructs Federal agencies to—

- (1) Review telework barriers, act to remove them, and increase actual participation;
- (2) Establish eligibility criteria; and
- (3) Subject to any applicable agency policies or bargaining obligations, allow employees who meet the criteria and want to participate the opportunity if they are satisfactory performers.

(b) 40 U.S.C. 587 requires agencies considering the acquisition of facilities for use by Federal employees to consider whether the facility need can be met using alternative workplace arrangements, such as telecommuting, hoteling, virtual offices, and other distributive work arrangements. If the agency needs assistance in this investigation and/or subsequent application of alternative workplace arrangements, GSA will provide guidance, assistance, and oversight, as needed, regarding establishment and operation of alternative workplace arrangements.

(c) Agencies evaluating alternative workplace arrangements should also make these evaluations in coordination with Integrated Workplace policies and strategies. See § 102-79.110.

**§ 102-74.595 How can agencies obtain guidance, assistance, and oversight regarding alternative workplace arrangements from GSA?**

Agencies may request assistance from the GSA/PBS regional office responsible for providing space in the geographic area under consideration.

**§ 102-74.600 Should Federal agencies utilize telework centers?**

Yes. In accordance with Public Law 107-217 (August 21, 2002), each of the following departments and agencies, in each fiscal year, must make at least \$50,000 available from amounts provided for salaries and expenses for carrying out a flexiplace work telecommuting program (*i.e.*, to pay telework center program user fees):

- (a) Department of Agriculture.
- (b) Department of Commerce.
- (c) Department of Defense.
- (d) Department of Education.
- (e) Department of Energy.

- (f) Department of Health and Human Services.
- (g) Department of Housing and Urban Development.
- (h) Department of the Interior.
- (i) Department of Justice.
- (j) Department of Labor.
- (k) Department of State.
- (l) Department of Transportation.
- (m) Department of the Treasury.
- (n) Department of Veterans Affairs.
- (o) Environmental Protection Agency.
- (p) General Services Administration.
- (q) Office of Personnel Management.
- (r) Small Business Administration.
- (s) Social Security Administration.
- (t) United States Postal Service.

## Appendix to Part 102-74—Rules and Regulations Governing Conduct on Federal Property

### Federal Management Regulations

#### Title 41, Code of Federal Regulations, Part 102-74, Subpart C

*Applicability (41 CFR 102-74.365).* The rules in this subpart apply to all property under the authority of the U.S. General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to part 102-74 at each public entrance to each Federal facility.

*Inspection (41 CFR 102-74.370).* Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

*Admission to Property (41 CFR 102-74.375).* Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102-71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the

property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

*Preservation of Property (41 CFR 102-74.380).* All persons entering in or on Federal property are prohibited from—

(a) Improperly disposing of rubbish on property;

(b) Willfully destroying or damaging property;

(c) Stealing property;

(d) Creating any hazard on property to persons or things; and

(e) Throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building.

*Conformity with Signs and Directions (41 CFR 102-74.385).* Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

*Disturbances (41 CFR 102-74.390).* All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

*Gambling (41 CFR 102-74.395).* Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

(a) Participating in games for money or other personal property;

(b) Operating gambling devices;

(c) Conducting a lottery or pool; or

(d) Selling or purchasing numbers tickets.

*Narcotics and Other Drugs (41 CFR 102-74.400).* Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

*Alcoholic Beverages (41 CFR 102-74.405).* Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons

entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

*Soliciting, Vending and Debt Collection (41 CFR 102-74.410).* All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations; vending merchandise of all kinds; displaying or distributing commercial advertising, or collecting private debts, except for—

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled "Solicitation of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations," and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Public Law 95-454);

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 581(h)). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

*Posting and Distributing Materials (41 CFR 102-74.415).* All persons entering in or on Federal property are prohibited from—

(a) Distributing free samples of tobacco products in or around Federal buildings, under Public Law 104-52, Section 636;

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102-74.410, or when these displays are conducted as part of authorized Government activities; and

(c) Distributing materials, such as pamphlets, handbills, or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102-71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

*Photographs for News, Advertising, or Commercial Purposes (41 CFR 102-74.420).*

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

**Dogs and Other Animals (41 CFR 102–74.425).** No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

**Breastfeeding (41 CFR 102–74.426).** Public Law 108–199, Section 629, Division F, Title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

**Vehicular and Pedestrian Traffic (41 CFR 102–74.430).** All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

**Explosives (41 CFR 102–74.435).** No person entering or while on property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

**Weapons (41 CFR 102–74.440).** Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

**Nondiscrimination (41 CFR 102–74.445).** Federal agencies must not discriminate by segregation or otherwise against any person

or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

**Penalties (41 CFR 102–74.450).** A person found guilty of violating any rule or regulation in subpart C of this part while on any property under the charge and control of the U.S. General Services Administration shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

**Impact on Other Laws or Regulations (41 CFR 102–74.455).** No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

#### **Warning—Weapons Prohibited**

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

■ 5. Revise part 102–75 to read as follows:

### **PART 102–75—REAL PROPERTY DISPOSAL**

#### **Subpart A—General Provisions**

Sec.

102–76.5 What is the scope of this part?

102–75.10 What basic real property disposal policy governs disposal agencies?

#### **Real Property Disposal Services**

102–75.15 What real property disposal services must disposal agencies provide under a delegation of authority from GSA?

102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

#### **Subpart B—Utilization of Excess Real Property**

102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?

102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?

102–75.35 [Reserved]

#### **Standards**

102–75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?

102–75.45 What does the term "Not utilized" mean?

102–75.50 What does the term "Underutilized" mean?

102–75.55 What does the term "Not being put to optimum use" mean?

#### **Guidelines**

102–75.60 What are landholding agencies' responsibilities concerning real property surveys?

102–75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?

102–75.70 Are there any exceptions to this notification policy?

102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?

102–75.80 What are an Executive agency's responsibilities before requesting a transfer of excess real property?

102–75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?

102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?

102–75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?

#### **Land Withdrawn or Reserved From the Public Domain**

102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?

102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?

#### **Transfers Under Other Laws**

102–75.110 Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?

#### **Reporting of Excess Real Property**

102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?

102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?

#### **Title Report**

102–75.125 What information must agencies include in the title report?

102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include on the title report?

102–75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?

#### **Other Necessary Information**

102–75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?

**Examination for Acceptability**

- 102-75.145 Is GSA required to review each report of excess?
- 102-75.150 What happens when GSA determines that the report of excess is adequate?
- 102-75.155 What happens if GSA determines that the report of excess is insufficient?

**Designation as Personal Property**

- 102-75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?
- 102-75.165 Should related personal property be designated real or personal property for disposition purposes?
- 102-75.170 What happens to the related personal property in a structure scheduled for demolition?

**Transfers**

- 102-75.175 What are GSA's responsibilities regarding transfer requests?
- 102-75.180 May landholding agencies transfer excess real property without notifying GSA?
- 102-75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?
- 102-75.190 What amount must the transferee agency pay for the transfer of excess real property?
- 102-75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?
- 102-75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?
- 102-75.205 Are transfers ever made without reimbursement by the transferee agency?
- 102-75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?
- 102-75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?
- 102-75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?
- 102-75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?
- 102-75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?
- 102-75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?

**Temporary Utilization**

- 102-75.240 May excess real property be temporarily assigned/reassigned?

**Non-Federal Interim Use of Excess Property**

- 102-75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?

**Subpart C—Surplus Real Property Disposal**

- 102-75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?
- 102-75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?
- 102-75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?
- 102-75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

**Applicability of Antitrust Laws**

- 102-75.270 Must antitrust laws be considered when disposing of property?
- 102-75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?
- 102-75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?
- 102-75.285 Can a disposal agency dispose of real property to a private interest specified in § 102-75.270 before advice is received from the Attorney General?

**Disposals Under Other Laws**

- 102-75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?

**Credit Disposals**

- 102-75.295 What is the policy on extending credit in connection with the disposal of surplus property?

**Designation of Disposal Agencies**

- 102-75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?
- 102-75.297 Are there any exceptions to when landholding agencies may serve as the disposal agency?
- 102-75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in § 102-75.296?
- 102-75.299 What are landholding agencies' responsibilities if GSA conducts the disposal?

**Appraisal**

- 102-75.300 Are appraisals required for all real property disposal transactions?
- 102-75.305 What type of appraisal value must be obtained for real property disposal transactions?
- 102-75.310 Who must agencies use to appraise the real property?
- 102-75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?
- 102-75.320 Does appraisal information need to be kept confidential?

**Inspection**

- 102-75.325 What responsibility does the landholding agency have to provide

persons the opportunity to inspect available surplus property?

**Submission of Offers To Purchase or Lease**

- 102-75.330 What form must all offers to purchase or lease be in?

**Provisions Relating to Asbestos**

- 102-75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

**Provisions Relating to Hazardous Substance Activity**

- 102-75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?
- 102-75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

**Public Benefit Conveyances**

- 102-75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?
- 102-75.351 May the disposal agency waive screening for public benefit conveyances?
- 102-75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?
- 102-75.360 What wording must be in the non-discrimination clause that is required in the offer to purchase and the conveyance document?

**Power Transmission Lines**

- 102-75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?
- 102-75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
- 102-75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
- 102-75.380 May power transmission lines and rights-of-way be disposed of in other ways?

**Property for Public Airports**

- 102-75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?
- 102-75.390 What does the term "surplus airport property" mean?
- 102-75.395 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or

- tax-supported institution for a public airport?
- 102-75.400 Is industrial property located on an airport also considered to be "airport property"?
- 102-75.405 What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?
- 102-75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?
- 102-75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?
- 102-75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?
- 102-75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?
- 102-75.430 What happens if property conveyed for use as a public airport is revested in the United States?
- 102-75.435 Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970) apply to the transfer of airports to State and local agencies?
- Property for Use as Historic Monuments**
- 102-75.440 Who must disposal agencies notify that surplus property is available for historic monument use?
- 102-75.445 Who can convey surplus real and related personal property for historic monument use?
- 102-75.450 What type of property is suitable or desirable for use as a historic monument?
- 102-75.455 May historic monuments be used for revenue-producing activities?
- 102-75.460 What information must disposal agencies furnish eligible public agencies?
- 102-75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?
- 102-75.470 What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?
- 102-75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?
- 102-75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?
- 102-75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?
- Property for Educational and Public Health Purposes**
- 102-75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?
- 102-75.495 May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?
- 102-75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?
- 102-75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?
- 102-75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?
- 102-75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?
- 102-75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?
- 102-75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?
- 102-75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?
- 102-75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?
- 102-75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?
- 102-75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?
- Property for Providing Self-Help Housing or Housing Assistance**
- 102-75.550 What does "self-help housing or housing assistance" mean?
- 102-75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?
- 102-75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?
- 102-75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?
- 102-75.570 What happens if the disposal agency does not approve the assignment recommendation?
- 102-75.575 Who notifies nonprofit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?
- 102-75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?
- 102-75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?
- 102-75.590 What does the assignment recommendation contain?
- 102-75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?
- 102-75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?
- 102-75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?
- 102-75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?
- 102-75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?
- 102-75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?
- Property for Use as Public Park or Recreation Areas**
- 102-75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?
- 102-75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?
- 102-75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?
- 102-75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?
- 102-75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?
- 102-75.650 When must DOI request assignment of the property?
- 102-75.655 What does the assignment recommendation contain?

102-75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?

102-75.665 What happens after the disposal agency receives the assignment recommendation from DOI?

102-75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?

102-75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?

102-75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?

102-75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?

102-75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?

#### Property for Displaced Persons

102-75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?

102-75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?

102-75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?

102-75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?

102-75.715 When can a Federal agency request transfer of the property to the selected State agency?

102-75.720 Is there a specific or preferred format for the transfer request and who should receive it?

102-75.725 What does the transfer request contain?

102-75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?

102-75.735 What happens after the disposal agency receives the transfer request from the Federal agency?

102-75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?

102-75.745 What happens if the property transfer request is not approved by the disposal agency?

#### Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes

102-75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?

102-75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?

102-75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?

102-75.765 What does the term "law enforcement" mean?

102-75.770 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?

102-75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?

102-75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?

102-75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?

102-75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?

102-75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?

102-75.800 What information must be included in the deed of conveyance?

102-75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?

102-75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?

102-75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?

#### Property for Port Facility Use

102-75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?

102-75.825 Who must the disposal agency notify when surplus real and related

personal property is available for port facility use?

102-75.830 What does the surplus notice contain?

102-75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?

102-75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?

102-75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?

102-75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?

102-75.855 What happens if DOT does not submit an assignment recommendation?

102-75.860 What happens after the disposal agency receives the assignment recommendation from DOT?

102-75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?

102-75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?

102-75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?

#### Negotiated Sales

102-75.880 When may Executive agencies conduct negotiated sales?

102-75.885 What are the disposal agency's responsibilities concerning negotiated sales?

102-75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?

102-75.895 What wording must generally be in the excess profits clause that is required in the offer to purchase and in the conveyance document?

102-75.900 What is a negotiated sale for economic development purposes?

#### Explanatory Statements for Negotiated Sales

102-75.905 When must the disposal agency prepare an explanatory statement?

102-75.910 Are there any exceptions to this policy of preparing explanatory statements?

102-75.915 Do disposal agencies need to retain a copy of the explanatory statement?

102-75.920 Where is the explanatory statement sent?

102-75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?

102-75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?

#### Public Sales

102-75.935 What are disposal agencies' responsibilities concerning public sales?

**Disposing of Easements**

- 102-75.936 When can an agency dispose of an easement?
- 102-75.937 Can an easement be released or disposed of at no cost?
- 102-75.938 May the easement and the land that benefited from the easement (dominant estate) be disposed of separately?

**Granting Easements**

- 102-75.939 When can agencies grant easements?
- 102-75.940 Can agencies grant easements at no cost?
- 102-75.941 Does an agency retain responsibility for the easement?
- 102-75.942 What must agencies consider when granting easements?
- 102-75.943 What happens if granting an easement will reduce the value of the property?

**Non-Federal Interim Use of Surplus Property**

- 102-75.944 Can landholding agencies outlease surplus real property for non-Federal interim use?

**Subpart D—Management of Excess and Surplus Real Property**

- 102-75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?

**Taxes and Other Obligations**

- 102-75.950 Who has the responsibility for paying property-related obligations pending transfer or disposal of the property?

**Decontamination**

- 102-75.955 Who is responsible for decontaminating excess and surplus real property?

**Improvements or Alterations**

- 102-75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?

**Protection and Maintenance**

- 102-75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?
- 102-75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?
- 102-75.975 What happens if the property is not conveyed or disposed of during this time frame?
- 102-75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?

**Assistance in Disposition**

- 102-75.985 Is the landholding agency required to assist the disposal agency in the disposition process?

**Subpart E—Abandonment, Destruction, or Donation to Public Bodies**

- 102-75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?

**Dangerous Property**

- 102-75.995 May Federal agencies dispose of dangerous property?

**Determinations**

- 102-75.1000 How is the decision made to abandon, destroy, or donate property?
- 102-75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?
- 102-75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?

**Restrictions**

- 102-75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?

**Disposal Costs**

- 102-75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?

**Abandonment and Destruction**

- 102-75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?
- 102-75.1030 May Federal agencies abandon or destroy property in any manner they decide?
- 102-75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?
- 102-75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?
- 102-75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?
- 102-75.1050 Is there any property for which this subpart does not apply?

**Subpart F—Delegations****Delegation to the Department of Defense (DoD)**

- 102-75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?
- 102-75.1060 What must the Secretary of Defense do before determining that DoD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?
- 102-75.1065 When using a delegation of real property disposal authority under

this subpart, is DoD required to report excess property to GSA?

- 102-75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?

**Delegation to the Department of Agriculture (USDA)**

- 102-75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?
- 102-75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?
- 102-75.1085 When using a delegation of real property disposal authority under this subpart, is the USDA required to report excess property to GSA?
- 102-75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?

**Delegation to the Department of the Interior**

- 102-75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?
- 102-75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?
- 102-75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?

**Native American-Related Delegations**

- 102-75.1110 What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?
- 102-75.1115 Are there any limitations or restrictions on this delegation of authority?
- 102-75.1120 Does the property have to be Federally screened?
- 102-75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?
- 102-75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?
- 102-75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

**Subpart G—Conditional Gifts of Real Property to Further the Defense Effort**

- 102-75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?
- 102-75.1145 What action must the Federal agency receiving an offer of a conditional gift take?
- 102-75.1150 What happens to the gift if GSA determines it to be acceptable?
- 102-75.1155 May an acceptable gift of property be converted to money?

**Subpart H—Use of Federal Real Property to Assist the Homeless****Definitions**

102–75.1160 What definitions apply to this subpart?

**Applicability**

102–75.1165 What is the applicability of this subpart?

**Collecting the Information**

102–75.1170 How will information be collected?

**Suitability Determination**

102–75.1175 Who issues the suitability determination?

**Real Property Reported Excess to GSA**

102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

**Suitability Criteria**

102–75.1185 What are suitability criteria?

**Determination of Availability**

102–75.1190 What is the policy concerning determination of availability statements?

**Public Notice of Determination**

102–75.1195 What is the policy concerning making public the notice of determination?

**Application Process**

102–75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

**Action on Approved Applications**

102–75.1205 What action must be taken on approved applications?

**Unsuitable Properties**

102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

**No Applications Approved**

102–75.1215 What action must be taken if there is no expression of interest?

**Subpart I—Screening Excess Federal Real Property**

102–75.1220 How do landholding agencies find out if excess Federal real property is available?

102–75.1225 What details are provided in the “Notice of Availability”?

102–75.1230 How long does an agency have to indicate its interest in the property?

102–75.1235 Where should an agency send its written response to the “Notice of Availability”?

102–75.1240 Who, from the interested landholding agency, should submit the written response to GSA’s “Notice of Availability”?

102–75.1245 What happens after the landholding agency properly responds to a “Notice of Availability”?

102–75.1250 What if the agency is not quite sure it wants the property and needs more time to decide?

102–75.1255 What happens when more than one agency has a valid interest in the property?

102–75.1260 Does GSA conduct Federal screening on every property reported as excess real property?

102–75.1265 Are extensions granted to the Federal screening and response timeframes?

102–75.1270 How does an agency request a transfer of Federal real property?

102–75.1275 Does a requesting agency have to pay for excess real property?

102–75.1280 What happens if the property has already been declared surplus and an agency discovers a need for it?

102–75.1285 How does GSA transfer excess real property to the requesting agency?

102–75.1290 What happens if the landholding agency requesting the property does not promptly accept custody and accountability?

**Authority:** 40 U.S.C. 121(c), 521–523, 541–559; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

**Subpart A—General Provisions****§ 102–75.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. Federal agencies with authority to dispose of real property under Subchapter III of Chapter 5 of Title 40 of the United States Code will be referred to as “disposal agencies” in this part. Except in rare instances where GSA delegates disposal authority to a Federal agency, the “disposal agency” as used in this part refers to GSA.

**§ 102–75.10 What basic real property disposal policy governs disposal agencies?**

Disposal agencies must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support their real property utilization and disposal needs. Landholding agencies must survey the real property under their custody or control to identify property that is not utilized, underutilized, or not being put to optimum use. Disposal agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

**Real Property Disposal Services****§ 102–75.15 What real property disposal services must agencies provide under a delegation of authority from GSA?**

Disposal agencies must provide real property disposal services for real property assets under their custody and control, such as the utilization of excess property, surveys, and the disposal of surplus property, which includes public

benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

**§ 102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?**

Federal agencies with independent disposal authority are encouraged to obtain utilization, disposal, and related services from those agencies with expertise in real property disposal, such as GSA, as allowed by 31 U.S.C. 1535 (the Economy Act), so that they can remain focused on their core mission.

**Subpart B—Utilization of Excess Real Property****§ 102–75.25 What are landholding agencies’ responsibilities concerning the utilization of excess property?**

Landholding agencies’ responsibilities concerning the utilization of excess property are to—

(a) Achieve maximum use of their real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property;

(b) Increase the identification and reporting of their excess real property; and

(c) Fulfill its needs for real property, so far as practicable, by utilization of real property determined excess by other agencies, pursuant to the provision of this part, before it purchases non-Federal real property.

**§ 102–75.30 What are disposal agencies’ responsibilities concerning the utilization of excess property?**

Disposal agencies’ responsibilities concerning the utilization of excess property are to—

(a) Provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia; and

(b) Resolve conflicting requests for transferring real property that the involved agencies cannot resolve.

**§ 102–75.35 [Reserved]****Standards****§ 102–75.40 What are the standards that each Executive agency must use to identify unneeded Federal real property?**

Each Executive agency must identify unneeded Federal property using the following standards:

(a) Not utilized.

(b) Underutilized.

(c) Not being put to optimum use.

**§ 102–75.45 What does the term “Not utilized” mean?**

Not utilized means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable Executive agency, or occupied in caretaker status only.

**§ 102–75.50 What does the term “Underutilized” mean?**

Underutilized means an entire property or portion thereof, with or without improvements, which is used—

(a) Irregularly or intermittently by the accountable Executive agency for current program purposes of that agency; or

(b) For current program purposes that can be satisfied with only a portion of the property.

**§ 102–75.55 What does the term “Not being put to optimum use” mean?**

Not being put to optimum use means an entire property or portion thereof, with or without improvements, which—

(a) Even though used for current program purposes, the nature, value, or location of the property is such that it could be utilized for a different and significantly higher and better purpose; or

(b) The costs of occupying are substantially higher than other suitable properties that could be made available through transfer, purchase, or lease with total net savings to the Government, after considering property values, costs of moving, occupancy, operational efficiency, environmental effects, regional planning, and employee morale.

**Guidelines****§ 102–75.60 What are landholding agencies’ responsibilities concerning real property surveys?**

A landholding agency’s responsibilities concerning real property utilization surveys are to—

(a) Survey real property under its control (*i.e.*, property reported on its financial statements) at least annually to identify property that is not utilized, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another use would better serve the public interest, considering both the Federal agency’s needs and the property’s location. In conducting annual reviews of their property holdings, the GSA Customer Guide to Real Property Disposal can provide guidelines for Executive agencies to consider in identifying unneeded Federal real property;

(b) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(c) Promptly report to GSA real property that it has determined to be excess.

**§ 102–75.65 Why is it important for Executive agencies to notify the disposal agency of its real property needs?**

It is important that each Executive agency notify the disposal agency of its real property needs to determine whether the excess or surplus property of another agency is available that would meet its need and prevent the unnecessary purchase or lease of real property.

**§ 102–75.70 Are there any exceptions to this notification policy?**

Yes, Executive agencies are not required to notify the disposal agency when an agency’s proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics that limit the possible use of other available property. For example, Executive agencies are not required to notify disposal agencies concerning the acquisition of real property for a dam site, reservoir area, or the construction of a generating plant or a substation, since specific lands are needed, which limit the possible use of other available property. Therefore, no useful purpose would be served by notifying the disposal agency.

**§ 102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?**

In every case of a proposed transfer of excess real property, the most important consideration is the validity and appropriateness of the requirement upon which the proposal is based. Also, a proposed transfer must not establish a new program that has never been reflected in any previous budget submission or congressional action. Additionally, a proposed transfer must not substantially increase the level of an agency’s existing programs beyond that which has been contemplated in the President’s budget or by the Congress.

(Note: See Subpart I—Screening of Excess Federal Real Property (§§ 102–75.1220 through 102–75.1290) for information on screening and transfer requests.)

**§ 102–75.80 What are an Executive agency’s responsibilities before requesting a transfer of excess real property?**

Before requesting a transfer of excess real property, an Executive agency must—

(a) Screen its own property holdings to determine whether the new requirement can be met through improved utilization of existing real property; however, the utilization must be for purposes that are consistent with the highest and best use of the property under consideration;

(b) Review all real property under its accountability that has been permitted or outleased and terminate the permit or lease for any property, or portion thereof, suitable for the proposed need, if termination is not prohibited by the terms of the permit or lease;

(c) Utilize property that is or can be made available under § 102–75.80(a) or (b) for the proposed need in lieu of requesting a transfer of excess real property and reassign the property, when appropriate;

(d) Confirm that the appraised fair market value of the excess real property proposed for transfer will not substantially exceed the probable purchase price of other real property that would be suitable for the intended purpose;

(e) Limit the size and quantity of excess real property to be transferred to the actual requirements and separate, if possible, other portions of the excess installation for possible disposal to other agencies or to the public; and

(f) Consider the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer; agencies must be able to demonstrate that the transfer will be more economical over a sustained period of time than the acquisition of a new facility specifically planned for the purpose.

**§ 102–75.85 Can disposal agencies transfer excess real property to agencies for programs that appear to be scheduled for substantial curtailment or termination?**

Yes, but only on a temporary basis with the condition that the property will be released for further Federal utilization or disposal as surplus property at an agreed upon time when the transfer is arranged.

**§ 102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?**

GSA may temporarily assign or direct the use of such excess real property to the requesting agency. See § 102–75.240.

**§ 102–75.95 Can Federal agencies that normally do not require real property (other than for office, storage, and related purposes) or that may not have statutory authority to acquire such property, obtain the use of excess real property?**

Yes, GSA can authorize the use of excess real property for an approved program. See § 102–75.240.

**Land Withdrawn or Reserved From the Public Domain**

**§ 102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?**

An agency holding unneeded land withdrawn or reserved from the public domain must submit to the appropriate GSA Regional Office a Report of Excess Real Property (Standard Form 118), with appropriate Schedules A, B, and C, only when—

(a) It has filed a notice of intention to relinquish with the Department of the Interior (43 CFR part 2372 *et seq.*) and sent a copy of the notice to the appropriate GSA Regional Office;

(b) The Department of the Interior has notified the agency that the Secretary of the Interior has determined that the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(c) The Department of the Interior provides a report identifying whether or not any other agency claims primary, joint, or secondary jurisdiction over the lands and whether its records show that the lands are encumbered by rights or privileges under the public land laws.

**§ 102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?**

In such cases, the Department of the Interior must—

(a) Notify the appropriate GSA Regional Office of such a determination; and

(b) Authorize the landholding agency to identify in the Standard Form 118 any minerals in the land that the Department of the Interior determines to be unsuitable for disposition under the public land mining and mineral leasing laws.

**Transfers Under Other Laws**

**§ 102–75.110 Can transfers of real property be made under authority of laws other than those codified in Title 40 of the United States Code?**

Yes, the provisions of this section shall not apply to transfers of real

property authorized to be made by 40 U.S.C. 113(e) or by any special statute that directs or requires an Executive agency to transfer or convey specifically described real property in accordance with the provisions of that statute. Transfers of real property must be made only under the authority of Title 40 of the United States Code, unless the independent authority granted to such agency specifically exempts the authority from the requirements of Title 40.

**Reporting of Excess Real Property**

**§ 102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?**

Yes, landholding agencies must prepare reports of excess real property and related personal property on—

(a) Standard Form 118, Report of Excess Real Property, and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A;

(b) Standard Form 118b, Land, Schedule B; and

(c) Standard Form 118c, Related Personal Property, Schedule C.

**§ 102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?**

Yes, in all cases where Government-owned land is reported excess, Executive agencies must include a title report, prepared or approved by a qualified employee of the landholding agency, documenting the Government's title to the property.

**Title Report**

**§ 102–75.125 What information must agencies include in the title report?**

When completing the title report, agencies must include—

(a) The description of the property;

(b) The date title vested in the United States;

(c) All exceptions, reservations, conditions, and restrictions, relating to the title;

(d) Detailed information concerning any action, thing, or circumstance that occurred from the date the United States acquired the property to the date of the report that in any way affected or may have affected the United States' right, title, or interest in and to the real property (including copies of legal comments or opinions discussing the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect must be made a part of the report;

(e) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect must be made a part of the report;

(f) Detailed information regarding any known flood hazards or flooding of the property, and, if the property is located in a flood-plain or on wetlands, a listing of restricted uses (along with the citations) identified in Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977;

(g) The specific identification and description of fixtures and related personal property that have possible historic or artistic value;

(h) The historical significance of the property and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property listed in the National Register. If the landholding agency is aware of any effort by the public to have the property listed in the National Register, it must also include this information;

(i) A description of the type, location, and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fire-proofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property. Agencies must also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (The provisions of this subpart do not apply to asbestos on Federal property that is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499);

(j) A statement indicating whether or not lead-based paint is present on the property. Additionally, if the property is target housing (all housing except housing for the elderly or persons with disabilities or any zero bedroom dwelling) constructed prior to 1978, provide a risk assessment and paint inspection report that details all lead-based paint hazards; and

(k) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the U.S. Environmental Protection Agency (EPA) at 40 CFR part 373, took place on the property. Hazardous substance activity

includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property must review the regulations issued by EPA at 40 CFR part 373 for details on the information required and must comply with these requirements. In addition, agencies reporting such property shall review and comply with the regulations for the utilization and disposal of hazardous materials and certain categories of property set forth at 41 CFR part 101-42.

**§ 102-75.130 If hazardous substance activity took place on the property, what specific information must an agency include in the title report?**

If hazardous substance activity took place on the property, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. The reporting agency must also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such hazardous substance activity was taken before the date the property was reported excess. If such action was not taken, the reporting agency must advise the disposal agency when such action will be completed or how the agency expects to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the disposal. See §§ 102-75.340 and 102-75.345.

**§ 102-75.135 If no hazardous substance activity took place on the property, what specific information must an agency include in the title report?**

If no hazardous substance activity took place, the reporting agency must include the following statement:

The (reporting agency) has determined, in accordance with regulations issued by EPA at 40 CFR part 373, that there is no evidence indicating that hazardous substance activity took place on the property during the time the property was owned by the United States.

**Other Necessary Information**

**§ 102-75.140 In addition to the title report, and all necessary environmental information and certifications, what information must an Executive agency transmit with the Report of Excess Real Property (Standard Form 118)?**

Executive agencies must provide—  
 (a) A legible, reproducible copy of all instruments in possession of the agency that affect the United States' right, title, or interest in the property reported or the use and operation of such property (including agreements covering and

licenses to use, any patents, processes, techniques, or inventions). If it is impracticable to transmit the abstracts of title and related title evidence, agencies must provide the name and address of the custodian of such documents in the title report referred to in § 102-75.120;

(b) Any appraisal reports indicating or providing the fair market value or the fair annual rental of the property, if requested by the disposal agency; and

(c) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by EPA under 40 CFR part 761, if requested by the disposal agency. If the property does contain any equipment subject to EPA regulation under 40 CFR part 761, the certification must include the landholding agency's assurance that each piece of equipment is now and will continue to be in compliance with the EPA regulations until disposal of the property.

**Examination for Acceptability**

**§ 102-75.145 Is GSA required to review each report of excess?**

Yes, GSA must review each report of excess to ascertain whether the report was prepared according to the provisions of this part. GSA must notify the landholding agency, in writing, whether the report is acceptable or other information is needed within 15 calendar days after receipt of the report.

**§ 102-75.150 What happens when GSA determines that the report of excess is adequate?**

When GSA determines that a report is adequate, GSA will accept the report and inform the landholding agency of the acceptance date. However, the landholding agency must, upon request, promptly furnish any additional information or documents relating to the property required by GSA to accomplish a transfer or a disposal.

**§ 102-75.155 What happens if GSA determines that the report of excess is insufficient?**

Where GSA determines that a report is insufficient, GSA will return the report and inform the landholding agency of the facts and circumstances that make the report insufficient. The landholding agency must promptly take appropriate action to submit an acceptable report to GSA. If the landholding agency is unable to submit an acceptable report, the property will no longer be considered as excess property and the disposal agency will cease activity for the disposal of the property. However, GSA may accept the

report of excess on a conditional basis and identify what deficiencies in the report must be corrected in order for the report to gain full acceptance.

**Designation as Personal Property**

**§ 102-75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?**

Prefabricated movable structures such as Butler-type storage warehouses, Quonset huts, and house trailers (with or without undercarriages) reported to GSA along with the land on which they are located may, at GSA's discretion, be designated for disposition as personal property for off-site use or as real property for disposal with the land.

**§ 102-75.165 Should related personal property be designated real or personal property for disposition purposes?**

Related personal property may, at the disposal agency's discretion, be designated as personal property for disposal purposes. However, for fine artwork and sculptures, GSA's policy is that artwork specifically created for a Federal building is considered as a fixture of the building. This also applies to sculptures created for a Federal building or a public park. Disposal agencies must follow the policies and guidance for disposal of artwork and sculptures developed by the GSA Office of the Chief Architect, Center for Design Excellence and the Arts, and the Bulletin dated March 26, 1934, entitled "Legal Title to Works Produced under the Public Works of Art Project."

**§ 102-75.170 What happens to the related personal property in a structure scheduled for demolition?**

When a structure is to be demolished, any fixtures or related personal property therein may, at the disposal agency's discretion, be designated for disposition as personal property where a ready disposition can be made of these items. As indicated in § 102-75.165, particular consideration should be given to designating items having possible historical or artistic value as personal property.

**Transfers**

**§ 102-75.175 What are GSA's responsibilities regarding transfer requests?**

Before property can be transferred among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia, GSA must determine that—

(a) The transfer is in the best interest of the Government;

(b) The requesting agency is the appropriate agency to hold the property; and

(c) The proposed land use will maximize use of the real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property.

(Note: See Subpart I—Screening of Excess Federal Real Property (§§ 102–75.1220 through 102–75.1290) for information on screening and transfer requests.)

**§ 102–75.180 May landholding agencies transfer excess real property without notifying GSA?**

Landholding agencies may, without notifying GSA, transfer excess real property that they use, occupy, or control under a lease, permit, license, easement, or similar instrument when—

(a) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(b) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(c) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet.

**§ 102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?**

In those instances, landholding agencies must transfer property following the policies in this subpart.

**§ 102–75.190 What amount must the transferee agency pay for the transfer of excess real property?**

The transferee agency must pay an amount equal to the property's fair market value (determined by the Administrator)—

(a) Where the transferor agency has requested the net proceeds of the transfer pursuant to 40 U.S.C. 574; or

(b) Where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841), is a mixed-ownership Government corporation, or the municipal government of the District of Columbia.

**§ 102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?**

As may be agreed upon by GSA and the corporation, the transferee agency must pay an amount equal to—

(a) The estimated fair market value of the property; or

(b) The corporation's book value of the property.

**§ 102–75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?**

Where the transfer is for the purpose of upgrading facilities (*i.e.*, for the purpose of replacing other property of the transferee agency, which because of the location, nature, or condition thereof, is less efficient for use), the transferee must pay an amount equal to the difference between the fair market value of the property to be replaced and the fair market value of the property requested, as determined by the Administrator.

**§ 102–75.205 Are transfers ever made without reimbursement by the transferee agency?**

Transfers may be made without reimbursement by the transferee agency only if—

(a) Congress has specifically authorized the transfer without reimbursement, or

(b) The Administrator, with the approval of the Director of the Office of Management and Budget (OMB), has approved a request for an exception from the 100 percent reimbursement requirement.

**§ 102–75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?**

The request must include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12512, Federal Real Property Management, dated April 29, 1985. The transferee agency must attach the explanation to the Request for Transfer of Excess Real and Related Personal Property (GSA Form 1334) prior to submitting the form to GSA. The unavailability of funds alone is not sufficient to justify an exception.

**§ 102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?**

Agency heads must endorse requests for exceptions to the 100 percent reimbursement requirement.

**§ 102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?**

Agencies must submit all requests for exception from the 100 percent reimbursement requirement to the appropriate GSA regional property disposal office.

**§ 102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?**

The Administrator must review all requests for exception from the 100 percent reimbursement requirement. If the Administrator approves the request, it is then submitted to OMB for final concurrence. If OMB approves the request, then GSA may complete the transfer.

**§ 102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?**

The agency requesting the property will assume responsibility for protection and maintenance costs not more than 40 days from the date of the Administrator's letter to OMB requesting concurrence for an exception to the 100 percent reimbursement requirement. If the request is denied, the requesting agency may pay the fair market value for the property or withdraw its request. If the request is withdrawn, responsibility for protection and maintenance cost will return to the landholding agency at that time.

**§ 102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?**

Yes, disposal agencies may transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction, pursuant to the provisions of 40 U.S.C. 113(d). The amount of reimbursement for such transfer must be the same as would be required for a transfer of excess property to an Executive agency under similar circumstances.

**Temporary Utilization**

**§ 102–75.240 May excess real property be temporarily assigned/reassigned?**

Yes, whenever GSA determines that it is more advantageous to assign property temporarily rather than permanently, it may do so. If the space is for office, storage, or related facilities, GSA will determine the length of the assignment/reassignment. Agencies are required to reimburse the landholding agency (or GSA, if GSA has become responsible for seeking an appropriation for protection and maintenance expenses) (see § 102–75.970) for protection and maintenance expenses. GSA may also temporarily assign/reassign excess real property for uses other than storage, office or related facilities. In such cases, the agency receiving the temporary assignment may be required to pay a rental or users charge based upon the fair market value of the property, as determined by GSA.

If the property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at an agreed upon time (see § 102-75.85). The requesting agency is responsible for protection and maintenance expenses.

#### **Non-Federal Interim Use of Excess Property**

##### **§ 102-75.245 When can landholding agencies grant rights for non-Federal interim use of excess property reported to GSA?**

Landholding agencies, upon approval from GSA, may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency and when the interim use will not impair the ability to dispose of the property.

#### **Subpart C—Surplus Real Property Disposal**

##### **§ 102-75.250 What general policy must the disposal agency follow concerning the disposal of surplus property?**

The disposal agency must dispose of surplus real property—

(a) In the most economical manner consistent with the best interests of the Government; and

(b) Ordinarily for cash, consistent with the best interests of the Government.

##### **§ 102-75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?**

The disposal agency must determine that there is no further Federal need or requirement for the excess real property and the property is surplus to the needs of the Federal Government. After reaching this determination, the disposal agency must expeditiously make the surplus property available for acquisition by State and local governmental units and non-profit institutions (see § 102-75.350) or for sale by public advertising, negotiation, or other disposal action. The disposal agency must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value. Where hazardous substance activity is identified, see §§ 102-75.340 and 102-75.345 for required information that the disposal agency must incorporate into the offer to purchase and conveyance document.

##### **§ 102-75.260 When may the disposal agency dispose of surplus real property by exchange for privately owned property?**

The disposal agency may dispose of surplus real property by exchange for privately owned property for property management considerations such as boundary realignment or for providing access. The disposal agency may also dispose of surplus real property by exchange for privately owned property where authorized by law, when the requesting Federal agency receives approval from the Office of Management and Budget and the appropriate oversight committees, and where the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other acquisition method.

##### **§ 102-75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?**

Yes, conveyance documents must identify all agreements and representations concerning restrictions and conditions affecting the property's future use, maintenance, or transfer.

#### **Applicability of Antitrust Laws**

##### **§ 102-75.270 Must antitrust laws be considered when disposing of property?**

Yes, antitrust laws must be considered in any case in which there is contemplated a disposal to any private interest of—

(a) Real and related personal property that has an estimated fair market value of \$3 million or more; or

(b) Patents, processes, techniques, or inventions, irrespective of cost.

##### **§ 102-75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?**

The Attorney General determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws.

##### **§ 102-75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?**

The disposal agency must promptly provide the Attorney General with notice of any such proposed disposal and the probable terms or conditions, as required by 40 U.S.C. 559. If notice is given by any disposal agency other than GSA, a copy of the notice must also be provided simultaneously to the GSA Regional Office in which the property is located. Upon request, a disposal agency must furnish information that the Attorney General believes to be necessary in determining whether the

proposed disposition or any other disposition of surplus real property violates or would violate any of the antitrust laws.

##### **§ 102-75.285 Can a disposal agency dispose of real property to a private interest specified in § 102-75.270 before advice is received from the Attorney General?**

No, advice from the Attorney General must be received before disposing of real property.

#### **Disposals Under Other Laws**

##### **§ 102-75.290 Can disposals of real property be made under authority of laws other than Chapter 5 of Subtitle I of Title 40 of the United States Code?**

Except for disposals specifically authorized by special legislation, disposals of real property must be made only under the authority of Chapter 5 of Subtitle I of Title 40 of the United States Code. However, the Administrator of General Services can evaluate, on a case-by-case basis, the disposal provisions of any other law to determine consistency with the authority conferred by Title 40. The provisions of this section do not apply to disposals of real property authorized to be made by 40 U.S.C. 113 or by any special statute that directs or requires an Executive agency named in the law to transfer or convey specifically described real property in accordance with the provisions of that statute.

#### **Credit Disposals**

##### **§ 102-75.295 What is the policy on extending credit in connection with the disposal of surplus property?**

The disposal agency—

(a) May extend credit in connection with any disposal of surplus property when it determines that credit terms are necessary to avoid reducing the salability of the property and potential obtainable price and, when below market rates are extended, confer with the Office of Management and Budget to determine if the Federal Credit Reform Act of 1990 is applicable to the transaction;

(b) Must administer and manage the credit disposal and any related security;

(c) May enforce, adjust, or settle any right of the Government with respect to extending credit in a manner and with terms that are in the best interests of the Government; and

(d) Must include provisions in the conveyance documents that obligate the purchaser, where a sale is made upon credit, to obtain the disposal agency's prior written approval before reselling or leasing the property. The purchaser's credit obligations to the United States must be fulfilled before the disposal

agency may approve the resale of the property.

### Designation of Disposal Agencies

#### § 102-75.296 When may a landholding agency other than GSA be the disposal agency for real and related personal property?

A landholding agency may be the disposal agency for real and related personal property when—

(a) The agency has statutory authority to dispose of real and related personal property;

(b) The agency has delegated authority from GSA to dispose of real and related personal property; or

(c) The agency is disposing of—

(1) Leases, licenses, permits, easements, and other similar real estate interests held by agencies in non-Government-owned real property;

(2) Government-owned improvements, including fixtures, structures, and other improvements of any kind as long as the underlying land is not being disposed; or

(3) Standing timber, embedded gravel, sand, stone, and underground water, without the underlying land.

#### § 102-75.297 Are there any exceptions to when landholding agencies can serve as the disposal agency?

Yes, landholding agencies may not serve as the disposal agency when—

(a) Either the landholding agency or GSA determines that the Government's best interests are served by disposing of leases, licenses, permits, easements and similar real estate interests together with other property owned or controlled by the Government that has been or will be reported to GSA, or

(b) Government-owned machinery and equipment being used by a contractor-operator will be sold to a contractor-operator.

#### § 102-75.298 Can agencies request that GSA be the disposal agency for real property and real property interests described in § 102-75.296?

Yes. If requested, GSA, at its discretion, may be the disposal agency for such real property and real property interests.

#### § 102-75.299 What are landholding agencies' responsibilities if GSA conducts the disposal?

Landholding agencies are and remain responsible for all rental/lease payments until the lease expires or is terminated. Landholding agencies are responsible for paying any restoration or other direct costs incurred by the Government associated with termination of a lease, and for paying any demolition and removal costs not offset by the sale of the property. (See also § 102-75.965.)

### Appraisal

#### § 102-75.300 Are appraisals required for all real property disposal transactions?

Generally, yes, appraisals are required for all real property disposal transactions, except when—

(a) An appraisal will serve no useful purpose ( e.g., legislation authorizes conveyance without monetary consideration or at a fixed price). This exception does not apply to negotiated sales to public agencies intending to use the property for a public purpose not covered by any of the special disposal provisions in subpart C of this part; or

(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed \$300,000.

#### § 102-75.305 What type of appraisal value must be obtained for real property disposal transactions?

For all real property transactions requiring appraisals, agencies must obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of the property available for disposal.

#### § 102-75.310 Who must agencies use to appraise the real property?

Agencies must use only experienced and qualified real estate appraisers familiar with the types of property to be appraised when conducting the appraisal. When an appraisal is required for negotiation purposes, the same standard applies. However, agencies may authorize other methods of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining that data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

#### § 102-75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?

Yes, appraisers are authorized to consider the effect of historic covenants on the fair market value, if the property is in or eligible for listing in the National Register of Historic Places.

#### § 102-75.320 Does appraisal information need to be kept confidential?

Yes, appraisals, appraisal reports, appraisal analyses, and other pre-decisional appraisal documents are confidential and can only be used by authorized Government personnel who can substantiate the need to know this information. Appraisal information must not be divulged prior to the delivery and acceptance of the deed. Any persons engaged to collect or evaluate appraisal information must certify that—

(a) They have no direct or indirect interest in the property; and

(b) The report was prepared and submitted without bias or influence.

### Inspection

#### § 102-75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

Landholding agencies should provide all persons interested in acquiring available surplus property with the opportunity to make a complete inspection of the property, including any available inventory records, plans, specifications, and engineering reports that relate to the property. These inspections are subject to any necessary national security restrictions and are subject to the disposal agency's rules. (See §§ 102-75.335 and 102-75.985.)

### Submission of Offers To Purchase or Lease

#### § 102-75.330 What form must all offers to purchase or lease be in?

All offers to purchase or lease must be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency. In addition to the financial terms upon which the offer is predicated, the offer must set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and must contain such other information as the disposal agency may request.

### Provisions Relating to Asbestos

#### § 102-75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see § 102-75.125), the disposal agency must incorporate this information (less any cost or time estimates to remove the asbestos-containing materials) into any offer to purchase and conveyance document and include the following wording:

Notice of the Presence of Asbestos—Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA)

regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) that may be required in order to carry out any such inspection(s). Bidders (offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability, or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property that is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that, in its use and occupancy of the property, it will comply with all Federal, State, and local laws relating to asbestos.

### **Provisions Relating to Hazardous Substance Activity**

#### **§ 102-75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and the conveyance document?**

Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see §§ 102-75.125 and 102-75.130), the disposal agency must incorporate this information into any offer to purchase and conveyance document. In any offer to purchase and conveyance document, disposal agencies, generally, must also address the following (specific recommended language that addresses the following issues can be found in the GSA Customer Guide to Real Property Disposal):

(a) Notice of all hazardous substance activity identified as a result of a complete search of agency records by the landholding agency.

(b) A statement, certified by a responsible landholding agency official in the Report of Excess Real Property, that all remedial actions necessary to protect human health and the environment with regard to such hazardous substance activity have been taken (this is not required in the offer to purchase or conveyance document in the case of a transfer of property under the authority of section 120(h)(3)(C) of CERCLA, or the Early Transfer Authority, or a conveyance to a "potentially responsible party", as defined by CERCLA (see 102-75.345)).

(c) A commitment, on behalf of the United States, to return to correct any hazardous condition discovered after the conveyance that results from hazardous substance activity prior to the date of conveyance.

(d) A reservation by the United States of a right of access in order to accomplish any further remedial actions required in the future.

#### **§ 102-75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?**

In the case where the purchaser or grantee is a potentially responsible party (PRP) with respect to hazardous substance activity on the property under consideration, the United States is no longer under a general obligation to certify that the property has been successfully remediated, or to commit to return to the property to address

contamination that is discovered in the future. Therefore, the statements of responsibility and commitments on behalf of the United States referenced in § 102-75.340 should not be used. Instead, language should be included in the offer to purchase and conveyance document that is consistent with any agreement that has been reached between the landholding agency and the PRP with regard to prior hazardous substance activity.

### **Public Benefit Conveyances**

#### **§ 102-75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?**

Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain non-profit institutions or organizations at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation. The implementing regulations for these conveyances are found in this subpart.

#### **§ 102-75.351 May the disposal agency waive screening for public benefit conveyances?**

All properties, consistent with the highest and best use analysis, will normally be screened for public benefit uses. However, the disposal agency may waive public benefit screening, with the exception of the mandatory McKinney-Vento homeless screening, for specific property disposal considerations, *e.g.*, when a property has been reported excess for exchange purposes.

#### **§ 102-75.355 What clause must be in the offer to purchase and the conveyance documents for public benefit conveyances?**

Executive agencies must include in the offer to purchase and conveyance documents the non-discrimination clause in § 102-75.360 for public benefit conveyances.

#### **§ 102-75.360 What wording must be in the non-discrimination clause that is required in the offer to purchase and in the conveyance document?**

The wording of the non-discrimination clause must be as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of

the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

#### Power Transmission Lines

##### **§ 102-75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?**

Yes, disposal agencies must notify State entities and Government agencies of the availability of a surplus power transmission line and right-of-way.

##### **§ 102-75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?**

Yes, section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)) allows any State or political subdivision, or any State or Government agency or instrumentality to certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needed to meet the requirements of a public or cooperative power project.

##### **§ 102-75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?**

Generally, once a State or political subdivision certifies that it needs a surplus power transmission line and the right-of-way, the disposal agency may sell the property to the state, or political subdivision thereof, at the fair market value. However, if a sale of a surplus transmission line cannot be accomplished because of the price to be charged, or other reasons, and the certification by the State or political subdivision is not withdrawn, the disposal agency must report the facts involved to the Administrator of General Services, to determine what further action will or should be taken to dispose of the property.

##### **§ 102-75.380 May power transmission lines and rights-of-way be disposed of in other ways?**

Yes, power transmission lines and rights-of-way not disposed of by sale for

fair market value may be disposed of following other applicable provisions of this part, including, if appropriate, reclassification by the disposal agency.

#### Property for Public Airports

##### **§ 102-75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?**

Yes, the disposal agency must notify eligible public agencies that property currently used as or suitable for use as a public airport under the Surplus Property Act of 1944, as amended, has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) must be transmitted with the copy of the surplus property notice sent to the appropriate regional office of the Federal Aviation Administration (FAA). The FAA must furnish an application form and instructions for the preparation of an application to eligible public agencies upon request.

##### **§ 102-75.390 What does the term "surplus airport property" mean?**

For the purposes of this part, surplus airport property is any surplus real property including improvements and personal property included as a part of the operating unit that the Administrator of FAA deems is—

(a) Essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101); or

(b) Reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from non-aviation businesses at a public airport. Approval for non-aviation revenue-producing areas may only be given for such areas as are anticipated to generate net proceeds that do not exceed expected deficits for operation of the aviation area applied for at the airport.

##### **§ 102-75.395 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?**

Yes, section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. § 47151) authorizes the disposal agency to convey or dispose of surplus airport property to a State, political subdivision, municipality, or tax-supported institution for use as a public airport.

##### **§ 102-75.400 Is industrial property located on an airport also considered to be "airport property"?**

No, if the Administrator of General Services determines that a property's highest and best use is industrial, then the property must be classified as such for disposal without regard to the public benefit conveyance provisions of this subpart.

##### **§ 102-75.405 What responsibilities does the Federal Aviation Administration (FAA) have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?**

As soon as possible after receiving the copy of the surplus notice, the FAA must inform the disposal agency of its determination. Then, the FAA must provide assistance to any eligible public agency known to have a need for the property for a public airport, so that the public agency may develop a comprehensive and coordinated plan of use and procurement for the property.

##### **§ 102-75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?**

After an eligible public agency submits a plan of use and application, the disposal agency must transmit two copies of the plan and two copies of the application to the appropriate FAA regional office. The FAA must promptly submit a recommendation to the disposal agency for disposal of the property for a public airport or must inform the disposal agency that no such recommendation will be submitted.

##### **§ 102-75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?**

The head of the disposal agency, or his or her designee, may convey property approved by the FAA for use as a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended.

##### **§ 102-75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?**

Any airport property that the FAA does not recommend for disposal as a public airport must be disposed of in accordance with other applicable provisions of this part. However, the disposal agency must first notify the landholding agency of its inability to dispose of the property for use as a public airport. In addition, the disposal

agency must allow the landholding agency 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

**§ 102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?**

The Administrator of the FAA has the sole responsibility for enforcing compliance with the terms and conditions of disposals to be used as a public airport. The FAA is also responsible for reforming, correcting, or amending any disposal instruments; granting releases; and any action necessary for recapturing the property, using the provisions of 49 U.S.C. 47101 *et seq.*

**§ 102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?**

If property that was conveyed for use as a public airport is revested in the United States for noncompliance with the terms of the disposal, or other cause, the Administrator of the FAA must be accountable for the property and must report the property to GSA as excess property following the provisions of this part.

**§ 102–75.435 Does the Airport and Airway Development Act of 1970, as amended (Airport Act of 1970), apply to the transfer of airports to State and local agencies?**

No, the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 47101–47131) (Airport Act of 1970), does not apply to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151–47153). Only property that the landholding agency determines cannot be reported excess to GSA for disposal under Title 40, but nevertheless may be made available for use by a State or local public body as a public airport without being inconsistent with the Federal program of the landholding agency, may be conveyed under the Airport Act of 1970. In the latter instance, the Airport Act of 1970 may be used to transfer non-excess land for airport development purposes provided it does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

**Property for Use as Historic Monuments**

**§ 102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?**

Disposal agencies must notify State and area wide clearinghouses and eligible public agencies that property that may be conveyed for use as a historic monument has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118) with accompanying schedules must be transmitted with the copy of each notice that is sent to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI).

**§ 102–75.445 Who can convey surplus real and related personal property for historic monument use?**

A disposal agency may convey surplus real and related personal property for use as a historic monument, without monetary consideration, to any State, political subdivision, instrumentality thereof, or municipality, for the benefit of the public, provided the Secretary of the Interior has determined that the property is suitable and desirable for such use.

**§ 102–75.450 What type of property is suitable or desirable for use as a historic monument?**

Only property conforming with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments shall be determined to be suitable or desirable for use as a historic monument.

**§ 102–75.455 May historic monuments be used for revenue-producing activities?**

The disposal agency may authorize the use of historic monuments conveyed under 40 U.S.C. 550(h) or the Surplus Property Act of 1944, as amended, for revenue-producing activities, if the Secretary of the Interior—

(a) Determines that the activities, described in the applicant's proposed program of use, are compatible with the use of the property for historic monument purposes;

(b) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(c) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. DOI must not approve the plan unless it provides that all income in excess of costs of repair, rehabilitation, restoration, maintenance, and a specified reasonable profit or payment that may accrue to a lessor,

sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities, is used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(d) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

**§ 102–75.460 What information must disposal agencies furnish eligible public agencies?**

Upon request, the disposal agency must furnish eligible public agencies with adequate preliminary property information and, with the landholding agency's cooperation, provide assistance to enable public agencies to obtain adequate property information.

**§ 102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?**

Eligible public agencies must submit the original and two copies of the completed application to acquire real property for use as a historic monument to the appropriate regional or field offices of NPS, which will forward one copy of the application to the appropriate regional office of the disposal agency.

**§ 102–75.470 What action must NPS take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?**

NPS must promptly—

(a) Submit the Secretary of the Interior's determination to the disposal agency; or

(b) Inform the disposal agency that no such recommendation will be submitted.

**§ 102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?**

The head of the disposal agency or his or her designee may convey to an eligible public agency surplus property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of 40 U.S.C. 550(h).

**§ 102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?**

The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of such a disposal. DOI is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property using the provisions of 40 U.S.C. 550(b). The actions are subject to the approval of the head of the disposal agency.

**§ 102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?**

In such a case, DOI must notify the appropriate GSA Public Buildings Service (PBS) Regional Office immediately by letter when title to the historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, including any improvements constructed since the original conveyance to the grantee. After receiving a statement from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Report of Excess Real Property, Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance of the property until the title reverts to the Federal Government, including the period of the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Educational and Public Health Purposes**

**§ 102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?**

The disposal agency must notify eligible public agencies that surplus property is available for educational and/or public health purposes. The notice must require that any plans for an educational or public health use, resulting from the development of the

comprehensive and coordinated plan of use and procurement for the property, must be coordinated with the Department of Education (ED) or the Department of Health and Human Services (HHS), as appropriate. The notice must also let eligible public agencies know where to obtain the applications, instructions for preparing them, and where to submit the application. The requirement for educational or public health use of the property by an eligible public agency is contingent upon the disposal agency's approval, under § 102–75.515, of a recommendation for assignment of Federal surplus real property received from ED or HHS. Further, any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in § 102–75.535.

**§ 102–75.495 May the Department of Education (ED) or the Department of Health and Human Services (HHS) notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?**

Yes, ED or HHS may notify eligible non-profit institutions that such property has been determined to be surplus. Notices to eligible non-profit institutions must require eligible non-profit institutions to coordinate any request for educational or public health use of the property with the appropriate public agency responsible for developing and submitting a comprehensive and coordinated plan of use and procurement for the property.

**§ 102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?**

The head of the disposal agency or his designee may—

(a) Assign to the Secretary of ED for disposal under 40 U.S.C. 550(c) surplus real property, including buildings, fixtures, and equipment, as recommended by the Secretary as being needed for school, classroom, or other educational use; or

(b) Assign to the Secretary of HHS for disposal under 40 U.S.C. 550 (d) such surplus real property, including buildings, fixtures, and equipment situated thereon, as recommended by the Secretary as being needed for use in the protection of public health, including research.

**§ 102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?**

Yes, eligible non-profit organizations will only receive surplus real property for an educational or public health use if the disposal agency approves or grants the assignment request from either ED or HHS. The disposal agency will also consider other uses for available surplus real property, taking into account the highest and best use determination. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(c) or (d) and referenced in this part.

**§ 102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?**

ED and HHS must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, ED or HHS has 30 calendar days to review and approve an application and request assignment of the property, or inform the disposal agency that no assignment request will be forthcoming.

**§ 102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?**

When an eligible public agency submits a plan of use for property for an educational or public health requirement, the disposal agency must transmit two copies of the plan to the regional office of ED or HHS, as appropriate. The ED or HHS must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, as appropriate, or must inform the disposal agency, within the 30–calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it must assign the property by letter or other document to the Secretary of ED or HHS, as appropriate. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the appropriate Department.

**§ 102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?**

Any assignment recommendation that ED or HHS submits to the disposal agency must provide complete information concerning the educational or public health use, including—

- (a) Identification of the property;
- (b) The name of the applicant and the size and nature of its program;
- (c) The specific use planned;
- (d) The intended public benefit allowance;
- (e) The estimate of the value upon which such proposed allowance is based; and
- (f) An explanation if the acreage or value of the property exceeds the standards established by the Secretary.

**§ 102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?**

Landholding agencies must cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating to the property.

**§ 102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?**

In the absence of an approved application from ED or HHS to convey the property for educational or public health purposes, which must be received within the 30 calendar day time limit, the disposal agency will proceed with other disposal actions.

**§ 102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, ED or HHS must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 days of receiving the Notice of Proposed Transfer, ED or HHS may prepare the transfer documents and proceed with the transfer. ED or HHS must take all necessary actions to accomplish the transfer within 15–calendar days beginning when the disposal agency approves the transfer. ED or HHS must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(c) or

(d) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

**§ 102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?**

ED or HHS, as appropriate, is responsible for enforcing compliance with the terms and conditions of transfer. ED or HHS is also responsible for reforming, correcting, or amending any transfer instruments; granting releases; and for taking any necessary actions for recapturing the property using or following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. ED or HHS must notify the disposal agency of its intent to take any actions to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

**§ 102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?**

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, ED or HHS must, prior to repossession or reversion of title, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from ED or HHS that the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with ED or HHS, determines that the property should be revested, ED or HHS must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Providing Self-Help Housing or Housing Assistance**

**§ 102–75.550 What does “self-help housing or housing assistance” mean?**

Property for self-help housing or housing assistance (which is separate from the program under Title V of the McKinney-Vento Homeless Assistance Act covered in subpart H of this part) is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of housing, under terms that require that—

- (a) Any individual or family receiving housing or housing assistance must contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and
- (b) Dwellings constructed, rehabilitated, or refurbished must be quality dwellings that comply with local building and safety codes and standards and must be available at prices below prevailing market prices.

**§ 102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?**

The head of the disposal agency, or designee, may assign, at his/her discretion, surplus real property, including buildings, fixtures, and equipment to the Secretary of the Department of Housing and Urban Development (HUD).

**§ 102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?**

The disposal agency must notify eligible public agencies that surplus property is available. The notice must require that any plans for self-help housing or housing assistance use resulting from the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD. Eligible public agencies may obtain an application form and instructions for preparing and submitting the application from HUD.

**§ 102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or non-profit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?**

Yes, the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization is contingent upon the disposal agency's approval under § 102–75.585 of HUD's assignment recommendation/request.

Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 550(f) and referenced in § 102–75.605.

**§ 102–75.570 What happens if the disposal agency does not approve the assignment recommendation?**

If the recommendation is not approved, the disposal agency must also notify the Secretary of HUD and then may proceed with other disposal action.

**§ 102–75.575 Who notifies non-profit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?**

HUD notifies eligible non-profit organizations, following guidance in the GSA Customer Guide to Real Property Disposal. Such notices must require eligible nonprofit organizations to—

(a) Coordinate any requirement for self-help housing or housing assistance use of the property with the appropriate public agency; and

(b) Declare to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property.

**§ 102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?**

HUD must notify the disposal agency within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, HUD has 30 calendar days to review and approve an application and request assignment or inform the disposal agency that no assignment request is forthcoming.

**§ 102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?**

When an eligible public agency submits a plan of use for property for a self-help housing or housing assistance requirement, the disposal agency must transmit two copies of the plan to the appropriate HUD regional office. HUD must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or must inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to HUD. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it must assign the property by letter or other document to the Secretary of HUD. The disposal agency must furnish to the landholding agency a

copy of the assignment, unless the landholding agency is also the disposal agency. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify the Secretary of HUD.

**§ 102–75.590 What does the assignment recommendation contain?**

Any assignment recommendation that HUD submits to the disposal agency must set forth complete information concerning the self-help housing or housing assistance use, including—

(a) Identification of the property;

(b) Name of the applicant and the size and nature of its program;

(c) Specific use planned;

(d) Intended public benefit allowance;

(e) Estimate of the value upon which such proposed allowance is based; and

(f) An explanation, if the acreage or value of the property exceeds the standards established by the Secretary.

**§ 102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?**

Landholding agencies must cooperate to the fullest extent possible with HUD representatives in their inspection of such property and in furnishing information relating to such property.

**§ 102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?**

In the absence of an approved application from HUD for self-help housing or housing assistance use, which must be received within the 30-calendar day time limit specified therein, the disposal agency must proceed with other disposal action.

**§ 102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, HUD must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days of receiving the Notice of Proposed Transfer, HUD may prepare the transfer documents and proceed with the transfer. HUD must take all necessary actions to accomplish the transfer within 15 calendar days beginning when the disposal agency approves the transfer. HUD must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under 40 U.S.C. 550(f) and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

**§ 102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?**

HUD is responsible for enforcing compliance with the terms and conditions of transfer. HUD is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for taking any necessary actions for recapturing the property using the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. HUD must notify the head of the disposal agency of its intent to take action to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

**§ 102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?**

HUD maintains responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Property transferred to an entity other than a public body and used for any purpose other than that for which it was sold or leased within a 30-year period must revert to the United States. If the property was leased, then the lease terminates. The appropriate Secretary (HUD or Department of Agriculture) and the Administrator of GSA can approve the new use of the property after the first 20 years of the original 30-year period has expired.

**§ 102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?**

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) must, prior to repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (Standard Form 118), and the appropriate schedules. After receiving a statement from HUD (or USDA) that title to the property is proposed for reversion, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with HUD (or USDA), determines that the property should be revested, HUD (or

USDA) must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

#### **Property for Use as Public Park or Recreation Areas**

##### **§ 102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?**

The head of the disposal agency or his or her designee is authorized to assign to the Secretary of the Interior for disposal under 40 U.S.C. 550(e), surplus real property, including buildings, fixtures, and equipment as recommended by the Secretary as being needed for use as a public park or recreation area for conveyance to a State, political subdivision, instrumentalities, or municipality.

##### **§ 102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?**

The disposal agency must notify established State, regional, or metropolitan clearinghouses and eligible public agencies that surplus property is available for use as a public park or recreation area. The disposal agency must transmit the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) with the copy of each notice sent to a regional or field office of the National Park Service (NPS) of the Department of the Interior (DOI).

##### **§ 102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?**

Upon request, DOI must furnish eligible public agencies with an application form to acquire property for permanent use as a public park or recreation area and preparation instructions for the application.

##### **§ 102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?**

DOI must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days from the date of the surplus notice.

##### **§ 102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?**

Landholding agencies must cooperate to the fullest extent possible with DOI representatives in their inspection of the property and in furnishing information relating to the property.

##### **§ 102–75.650 When must DOI request assignment of the property?**

Within 30 calendar days after the expiration of the 30–calendar day period specified in § 102–75.640, DOI must submit to the disposal agency an assignment recommendation along with a copy of the application or inform the disposal agency that a recommendation will not be made for assignment of the property.

##### **§ 102–75.655 What does the assignment recommendation contain?**

Any recommendation submitted by DOI must provide complete information concerning the plans for use of the property as a public park or recreation area, including—

- (a) Identification of the property;
- (b) The name of the applicant;
- (c) The specific use planned; and
- (d) The intended public benefit allowance.

##### **§ 102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?**

If DOI does not approve any applications or does not submit an assignment recommendation to convey the property for public park or recreation purposes, the disposal agency must proceed with other disposal action.

##### **§ 102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?**

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOI, it must assign the property by letter or other document to the Secretary of the Interior. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the Secretary.

##### **§ 102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?**

After receiving the disposal agency's assignment letter, the Secretary of the Interior must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed

transfer within 30 calendar days, the Secretary may proceed with the transfer. DOI must take all necessary actions to accomplish the transfer within 15 calendar days after the expiration of the 30–calendar day period provided for the disposal agency to consider the notice. DOI may place the applicant in possession of the property as soon as practicable to minimize the Government's expense of protection and maintenance of the property. As of the date the applicant takes possession of the property, or the date it is conveyed, whichever occurs first, the applicant must assume responsibility for care and handling and all risks of loss or damage to the property, and has all obligations and liabilities of ownership. DOI must furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under 40 U.S.C. 550(e) and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

##### **§ 102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?**

Where appropriate, the disposal agency may make the assignment subject to DOI requiring the grantee or recipient to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer, such as for surveys, fencing, security of the remaining property, or otherwise.

##### **§ 102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?**

The deed of conveyance of any surplus real property transferred for public park and recreation purposes under 40 U.S.C. 550(e) must require that the property be used and maintained for the purpose for which it was conveyed in perpetuity. In the event that the property ceases to be used or maintained for that purpose, all or any portion of such property will in its existing condition, at the option of the United States, revert to the United States. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions determined by the Secretary of the Interior to be necessary to safeguard the interests of the United States.

##### **§ 102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?**

The Secretary of the Interior is responsible for enforcing compliance

with the terms and conditions of transfer. The Secretary of the Interior is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for recapturing any property following the provisions of 40 U.S.C. 550(b). These actions are subject to the approval of the head of the disposal agency. DOI must notify the head of the disposal agency of its intent to take or recapture the property. The notice must identify the property affected and describe in detail the proposed action, including the reasons for the proposed action.

**§ 102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?**

DOI must notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification must cite the legal and administrative actions that DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, using the Report of Excess Real Property (Standard Form 118) and the appropriate schedules. After receiving notice from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Displaced Persons**

**§ 102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or Federally assisted projects?**

Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4638 (the Relocation Act), authorizes the disposal agency to transfer surplus real property

to a State agency to provide replacement housing under title II of the Relocation Act for persons who are or will be displaced by Federal or Federally assisted projects.

**§ 102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or Federally assisted projects?**

After receiving the surplus notice, any Federal agency needing property for replacement housing for displaced persons may solicit applications from eligible State agencies.

**§ 102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?**

Federal agencies must notify the disposal agency within 30 calendar days after the date of the surplus notice, if an eligible State agency is interested in acquiring the property under section 218 of the Relocation Act.

**§ 102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or Federally assisted projects?**

Both landholding and disposal agencies must cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of the property and in furnishing information relating to the property.

**§ 102–75.715 When can a Federal agency request transfer of the property to the selected State agency?**

Federal agencies must advise the disposal agency and request transfer of the property to the selected State agency within 30 calendar days after the expiration of the 30-calendar day period specified in § 102–75.705.

**§ 102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?**

Any request submitted by a Federal agency must be in the form of a letter addressed to the appropriate GSA Public Buildings Service (PBS) regional property disposal office.

**§ 102–75.725 What does the transfer request contain?**

Any transfer request must include—

- (a) Identification of the property by name, location, and control number;
- (b) The name and address of the specific State agency and a copy of the State agency's application or proposal;
- (c) A certification by the appropriate Federal agency official that the property

is required to house displaced persons authorized by section 218; that all other options authorized under title II of the Relocation Act have been explored and replacement housing cannot be found or made available through those channels; and that the Federal or Federally assisted project cannot be accomplished unless the property is made available for replacement housing;

(d) Any special terms and conditions that the Federal agency deems necessary to include in conveyance instruments to ensure that the property is used for the intended purpose;

(e) The name and proposed location of the Federal or Federally assisted project that is creating the requirement;

(f) Purpose of the project;

(g) Citation of enabling legislation or authorization for the project, when appropriate;

(h) A detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Relocation Act; and

(i) Details of the arrangements that have been made to construct replacement housing on the surplus property and to ensure that displaced persons will be provided housing in the development.

**§ 102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or Federally assisted projects?**

If the disposal agency does not receive a request for assignment or transfer of the property under § 102–75.715, then the disposal agency must proceed with other appropriate disposal actions.

**§ 102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?**

If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it must transfer the property to the designated State agency on such terms and conditions as will protect the United States' interests, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency must be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value. Disposal of the property at less than fair market value must also be approved by the disposal agency.

**§ 102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?**

Yes, the State agency is required to bear the costs of any out-of-pocket expenses necessary to accomplish the transfer, such as costs of surveys, fencing, or security of the remaining property.

**§ 102–75.745 What happens if the property transfer request is not approved by the disposal agency?**

If the request is not approved, the disposal agency must notify the Federal agency requesting the transfer. The disposal agency must furnish a copy of the notice of disapproval to the landholding agency.

**Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes****§ 102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?**

Under 40 U.S.C. 553, the head of the disposal agency or designee may, in his or her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named in the section; or to any political subdivision or instrumentality, surplus real and related personal property for—

(a) Correctional facility purposes, if the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(b) Law enforcement purposes, if the Attorney General has determined that the property is required for such purposes; or

(c) Emergency management response purposes, including fire and rescue services, if the Director of the Federal Emergency Management Agency (FEMA) has determined that the property is required for such purposes.

**§ 102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?**

The disposal agency must provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and FEMA that surplus property is available. The disposal agency's notice or notification must include a copy of the landholding agency's Report of Excess Real Property (Standard Form 118), with accompanying schedules.

**§ 102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?**

OJP or FEMA must send notices of availability to the appropriate State and local public agencies. The notices must state that OJP or FEMA, as appropriate, must coordinate and approve any planning involved in developing a comprehensive and coordinated plan of use and procurement for the property for correctional facility, law enforcement, or emergency management response use. The notice must also state that public agencies may obtain application forms and preparation instructions from OJP or FEMA.

**§ 102–75.765 What does the term “law enforcement” mean?**

The OJP defines “law enforcement” as “any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training.”

**§ 102–75.770 Is the disposal agency required to approve a determination by the Department of Justice (DOJ) that identifies surplus property for correctional facility use or for law enforcement use?**

Yes, the disposal agency must approve a determination, under § 102–75.795, by DOJ that identifies surplus property required for correctional facility use or for law enforcement use before an eligible public agency can obtain such property for correctional facility or law enforcement use.

**§ 102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?**

Yes, the disposal agency must approve a determination, under § 102–75.795, by FEMA that identifies surplus property required for emergency management response use before an eligible public agency can obtain such property for emergency management response use.

**§ 102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?**

OJP or FEMA must notify the disposal agency within 30 calendar days after the date of the surplus notice, if there is an eligible applicant interested in acquiring the property. After that 30-calendar day period expires, OJP or FEMA then has another 30 days to review and approve an appropriate program and notify the

disposal agency of the need for the property. If no application is approved, then OJP or FEMA must notify the disposal agency that there is no requirement for the property within the 30-calendar day period allotted for review and approval.

**§ 102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?**

Any determination that DOJ or FEMA submits to the disposal agency must provide complete information concerning the correctional facility, law enforcement, or emergency management response use, including—

(a) Identification of the property;

(b) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(c) A copy of the approved application that defines the proposed plan of use; and

(d) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

**§ 102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?**

Both landholding and disposal agencies must cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating to the property.

**§ 102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?**

If, after considering other uses for the property, the disposal agency approves the assignment request by DOJ or FEMA, the disposal agency must convey the property to the appropriate grantee. The disposal agency must proceed with other disposal action if it does not approve the assignment request, if DOJ or FEMA does not submit an assignment request, or if the disposal agency does not receive the determination within the 30 calendar days specified in § 102–75.780. The disposal agency must notify OJP or FEMA 15 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and must furnish to OJP or FEMA a copy of the conveyance documents.

**§ 102–75.800 What information must be included in the deed of conveyance?**

The deed of conveyance of any surplus real property transferred under the provisions of 40 U.S.C. 553 must provide that all property be used and maintained for the purpose for which it was conveyed in perpetuity. If the property ceases to be used or maintained for that purpose, all or any portion of the property must, at the option of the United States, revert to the United States in its existing condition. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions the Administrator of General Services determines to be necessary to safeguard the United States' interests.

**§ 102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?**

The Administrator of General Services is responsible for enforcing compliance with the terms and conditions of disposals of property to be used for correctional facility, law enforcement, or emergency management response purposes. GSA is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property following the provisions of 40 U.S.C. 553(e).

**§ 102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?**

Upon discovery of any information indicating a change in use, OJP or FEMA must—

- (a) Notify GSA; and
- (b) Upon request, make a redetermination of continued appropriateness of the use of a transferred property.

**§ 102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?**

OJP or FEMA must, prior to the repossession, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved. OJP or FEMA must use the Report of Excess Real Property (Standard Form 118), and the appropriate schedules for this purpose. After receiving a statement from OJP or FEMA that the title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in

consultation with OJP or FEMA, determines that the property should be revested, OJP or FEMA must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Property for Port Facility Use****§ 102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?**

Under 40 U.S.C. 554, the Administrator of General Services, the Secretary of the Department of Defense (in the case of property located at a military installation closed or realigned pursuant to a base closure law), or their designee, may assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to governmental bodies, any political subdivision, municipality, or instrumentality, surplus real and related personal property, including buildings, fixtures, and equipment situated on the property, that DOT recommends as being needed for the development or operation of a port facility.

**§ 102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?**

The disposal agency must notify established State, regional or metropolitan clearinghouses and eligible public agencies that surplus real property is available for the development or operation of a port facility. The disposal agency must transmit a copy of the notice to DOT and a copy of the landholding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

**§ 102–75.830 What does the surplus notice contain?**

Surplus notices to eligible public agencies must state—

- (a) That public agencies must coordinate any planning involved in the development of the comprehensive and coordinated plan of use and procurement of property, with DOT, the Secretary of Labor, and the Secretary of Commerce;
- (b) That any party interested in acquiring the property for use as a port

facility must contact the Department of Transportation, Maritime Administration, for the application and instructions;

(c) That the disposal agency must approve a recommendation from DOT before it can assign the property to DOT (see § 102–75.905); and

(d) That any subsequent conveyance is subject to the approval of the head of the disposal agency as stipulated under 40 U.S.C. 554 and referenced in § 102–75.865.

**§ 102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?**

DOT must notify the disposal agency within 30 calendar days after the date of the surplus notice if there is an eligible applicant interested in acquiring the property. After that 30-calendar day period expires, DOT then has another 30 calendar days to review and approve applications and notify the disposal agency of the need for the property. If no application is approved, then DOT must notify the disposal agency that there is no requirement for the property within the same 30-calendar day period allotted for review and approval.

**§ 102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?**

Whenever an eligible public agency has submitted a plan of use for a port facility requirement, the disposal agency must transmit two copies of the plan to DOT. DOT must either submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to DOT.

**§ 102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?**

Any assignment recommendation that DOT submits to the disposal agency must provide complete information concerning the contemplated port facility use, including—

- (a) An identification of the property;
- (b) An identification of the applicant;
- (c) A copy of the approved application, which defines the proposed plan of use of the property;
- (d) A statement that DOT's determination (that the property is located in an area of serious economic disruption) was made in consultation with the Secretary of Labor;
- (e) A statement that DOT approved the economic development plan,

associated with the plan of use of the property, in consultation with the Secretary of Commerce; and

(f) A copy of the explanatory statement, required under 40 U.S.C. 554(c)(2)(C).

**§ 102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?**

Landholding agencies must cooperate to the fullest extent possible with DOT representatives and the Secretary of Commerce in their inspection of such property, and with the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating to such property.

**§ 102–75.855 What happens if DOT does not submit an assignment recommendation?**

If DOT does not submit an assignment recommendation or if it is not received within 30 calendar days, the disposal agency must proceed with other disposal action.

**§ 102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?**

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, the disposal agency must assign the property by letter or other document to DOT. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify DOT. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency.

**§ 102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?**

After receiving the assignment letter from the disposal agency, DOT must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days after the date of the assignment letter. If the disposal agency approves the proposed transfer within 30 calendar days of the receipt of the Notice of Proposed Transfer, DOT may prepare the conveyance documents and proceed with the conveyance. DOT must take all necessary actions to accomplish the conveyance within 15 calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. DOT must furnish the disposal agency two conformed copies of the instruments conveying property and all related documents containing restrictions or conditions regulating the

future use, maintenance, or transfer of the property.

**§ 102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?**

DOT is responsible for enforcing compliance with the terms and conditions of conveyance, including reforming, correcting, or amending any instrument of conveyance; granting releases; and taking any necessary actions to recapture the property following the provisions of 40 U.S.C. 554(f). Any of these actions are subject to the approval of the head of the disposal agency. DOT must notify the head of the disposal agency of its intent to take any proposed action, identify the property affected, and describe in detail the proposed action, including the reasons for the proposed action.

**§ 102–75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?**

In each case of a repossession by the United States, DOT must, at or prior to reversion of title, provide the appropriate GSA regional property disposal office, with a Report of Excess Real Property (Standard Form 118) and accompanying schedules. After receiving a statement from DOT that title to the property is proposed for reversion, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOT, determines that the property should be revested, DOT must submit a Standard Form 118 to GSA. GSA will review and act upon the Standard Form 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

**Negotiated Sales**

**§ 102–75.880 When may Executive agencies conduct negotiated sales?**

Executive agencies may conduct negotiated sales only when—

(a) The estimated fair market value of the property does not exceed \$15,000;

(b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;

(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market

value of the property and other satisfactory terms of disposal are obtainable by negotiation;

(d) The disposals will be to States, the Commonwealth of Puerto Rico, possessions, political subdivisions, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or

(e) Negotiation is otherwise authorized by Chapter 5 of Subtitle I of Title 40 of the United States Code or other law, such as disposals of power transmission lines for public or cooperative power projects.

**§ 102–75.885 What are the disposal agency's responsibilities concerning negotiated sales?**

The disposal agency must—

(a) Obtain such competition as is feasible in all negotiations of disposals and contracts for disposal of surplus property; and

(b) Prepare and transmit an explanatory statement if the fair market value of the property exceeds \$100,000, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 545(e), to the appropriate committees of the Congress in advance of such disposal.

**§ 102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?**

Disposal agencies must include in the offer to purchase and conveyance documents an excess profits clause, which usually runs for 3 years, to eliminate the potential for windfall profits to public agencies. This clause states that, if the purchaser should sell or enter into agreements to sell the property within 3 years from the date of title transfer by the Federal Government, all proceeds in excess of the purchaser's costs will be remitted to the Federal Government.

**§ 102–75.895 What wording must generally be in the excess profits clause that is required in the offer to purchase and in the conveyance document?**

The wording of the excess profits clause should generally be as follows:

Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its

successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property.

(2) The direct costs actually incurred and paid for improvements that serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements.

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section.

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) To verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

(1) A statement indicating whether or not a resale has been made.

(2) A description of each portion of the property that has been resold.

(3) The sale price of each such resold portion.

(4) The identity of each purchaser.

(5) The proposed land use.

(6) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions that it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

#### **§ 102-75.900 What is a negotiated sale for economic development purposes?**

A negotiated sale for economic development purposes means that the public body purchasing the property will develop or make substantial improvements to the property with the intention of reselling or leasing the property in parcels to users to advance

the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community are greater than the anticipated proceeds derived from a competitive public sale.

#### **Explanatory Statements for Negotiated Sales**

##### **§ 102-75.905 When must the disposal agency prepare an explanatory statement?**

The disposal agency must prepare an explanatory statement of the circumstances of each of the following proposed disposals by negotiation:

(a) Any real property that has an estimated fair market value in excess of \$100,000, except that any real property disposed of by lease or exchange is subject only to paragraphs (b) through (d) of this section.

(b) Any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years.

(c) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of \$100,000.

(d) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property disposed in which any part of the consideration is real property.

##### **§ 102-75.910 Are there any exceptions to this policy of preparing explanatory statements?**

Yes, the disposal agency is not required to prepare an explanatory statement for property authorized to be disposed of without advertising by any provision of law other than 40 U.S.C. 545.

##### **§ 102-75.915 Do disposal agencies need to retain a copy of the explanatory statement?**

Yes, disposal agencies must retain a copy of the explanatory statement in their files.

##### **§ 102-75.920 Where is the explanatory statement sent?**

Disposal agencies must submit each explanatory statement to the Administrator of General Services for review and transmittal by letter from the Administrator of General Services to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and any other appropriate committees of the Senate and House of Representatives. Disposal agencies must include in the submission to the Administrator of General Services any supporting data that may be relevant and necessary for evaluating the proposed action.

##### **§ 102-75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?**

Yes, GSA must furnish copies of its transmittal letters to the committees of the Congress (see § 102-75.920) to the disposal agency.

##### **§ 102-75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?**

If there is no objection, the disposal agency may consummate the sale on or after 35 days from the date the Administrator of General Services transmitted the explanatory statement to the committees. If there is an objection, the disposal agency must resolve objections with the appropriate Congressional committee or subcommittee before consummating the sale.

#### **Public Sales**

##### **§ 102-75.935 What are disposal agencies' responsibilities concerning public sales?**

Disposal agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

#### **Disposing of Easements**

##### **§ 102-75.936 When can an agency dispose of an easement?**

When the use, occupancy or control of an easement is no longer needed, agencies may release the easement to the owner of the land subject to the easement (servient estate).

##### **§ 102-75.937 Can an easement be released or disposed of at no cost?**

Yes. However, agencies must consider the Government's cost of acquiring the easement and other factors when determining if the easement will be disposed of with or without monetary or other consideration. If the easement was acquired at substantial consideration, agencies must—

(a) Determine the easement's fair market value (estimate the fair market value of the fee land without the easement and with the easement then compute the difference or compute the damage the easement caused to the fee land); and

(b) Negotiate the highest obtainable price with the owner of the servient estate to release the easement.

**§ 102-75.938 May the easement and the land that benefited from the easement (dominant estate) be disposed of separately?**

Yes. If the easement is no longer needed in connection with the dominant estate, it may be disposed of separately to the owner of the servient estate. However, if the dominant estate is also surplus, the easement should be disposed of with the dominant estate.

**Granting Easements**

**§ 102-75.939 When can agencies grant easements?**

Agencies may grant easements in, on, or over Government-owned real property upon determining that the easement will not adversely impact the Government's interests.

**§ 102-75.940 Can agencies grant easements at no cost?**

Yes. Easements may be granted with or without monetary or other consideration, including any interest in real property.

**§ 102-75.941 Does an agency retain responsibility for the easement?**

Agencies may relinquish legislative jurisdiction as deemed necessary and desirable to the State where the real property containing the easement is located.

**§ 102-75.942 What must agencies consider when granting easements?**

Agencies must—

- (a) Determine the easement's fair market value; and
- (b) Determine the remaining property's reduced or enhanced value because of the easement.

**§ 102-75.943 What happens if granting an easement will reduce the value of the property?**

If the easement will reduce the property's value, agencies must grant the easement for the amount by which the property's fair market value is decreased unless the agency determines that the Government's best interests are served by granting the easement at either reduced or without monetary or other consideration.

**Non-Federal Interim Use of Surplus Property**

**§ 102-75.944 Can landholding agencies outlease surplus real property for non-Federal interim use?**

Yes, landholding agencies who possess independent authority to outlease property may allow organizations to use surplus real property awaiting disposal using either a lease or permit, only when—

(a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency;

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property; and

(c) The agency executing the agreement is responsible for the servicing of such property.

**Subpart D—Management of Excess and Surplus Real Property**

**§ 102-75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?**

GSA's policy is to—

(a) Manage excess and surplus real property, including related personal property, by providing only those minimum services necessary to preserve the Government's interest and realizable value of the property considered;

(b) Place excess and surplus real property in productive use through interim utilization, provided, that such temporary use and occupancy do not interfere with, delay, or impede its transfer to a Federal agency or disposal; and

(c) Render safe or destroy aspects of excess and surplus real property that are dangerous to the public health or safety.

**Taxes and Other Obligations**

**§ 102-75.950 Who has the responsibility for paying property-related obligations pending transfer or disposal of the property?**

Except as otherwise provided in § 102-75.230, the landholding agency is still responsible for any and all operational costs and expenses or other property-related obligations pending transfer or disposal of the property.

**Decontamination**

**§ 102-75.955 Who is responsible for decontaminating excess and surplus real property?**

The landholding agency is responsible for all expenses to the Government and for the supervision of the decontamination of excess and surplus real property that has been contaminated with hazardous materials of any sort. Extreme care must be exercised in the decontamination, management, and disposal of contaminated property in order to prevent such properties from becoming a hazard to the general public. The landholding agency must inform the disposal agency of any and all hazards involved relative to such property to protect the general public from hazards

and to limit the Government's liability resulting from disposal or mishandling of hazardous materials.

**Improvements or Alterations**

**§ 102-75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?**

Yes, landholding agencies may make improvements or alterations that involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in excess or surplus structures, utilities, installations, and land improvements, in those cases where disposal cannot be accomplished without such improvements or alterations. However, agencies must not enter into commitments concerning improvements or alterations without GSA's prior approval.

**Protection and Maintenance**

**§ 102-75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?**

The landholding agency remains responsible and accountable for excess and surplus real property, including related personal property, and must perform the protection and maintenance of such property pending transfer to another Federal agency or disposal. Guidelines for protection and maintenance of excess and surplus real property are in the GSA Customer Guide to Real Property Disposal. The landholding agency is responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

**§ 102-75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?**

Generally, the landholding agency is responsible for the cost of protection and maintenance of excess or surplus property until the property is transferred or disposed, but not more than 15 months. However, the landholding agency is responsible for providing and funding protection and maintenance during any delay beyond that 15 month period, if the landholding agency—

- (a) Requests deferral of the disposal beyond the 15 month period;
- (b) Continues to occupy the property beyond the 15 month period to the detriment of orderly disposal; or

(c) Otherwise takes actions that result in a delay in the disposition beyond the 15 months.

**§ 102–75.975 What happens if the property is not conveyed or disposed of during this time frame?**

If the property is not transferred to a Federal agency or disposed of during the 15-month period mentioned in § 102–75.970, then the disposal agency must pay or reimburse the landholding agency for protection and maintenance expenses incurred from the expiration date of said time period to final disposal, unless—

(a) There is no written agreement between the landholding agency and the disposal agency specifying the maximum amount of protection and maintenance expenses for which the disposal agency is responsible;

(b) The disposal agency's appropriation, as authorized by Congress, does not contain a provision to allow for payment and/or reimbursement of protection and maintenance expenses; or

(c) The delay is caused by an Executive agency's request for an exception from the 100 percent reimbursement requirement specified in § 102–75.205. In this latter case, the requesting agency becomes responsible for protection and maintenance expenses incurred because of the delay.

**§ 102–75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?**

If there is no written agreement (between the landholding agency and the disposal agency) or no Congressional appropriation to the disposal agency, the landholding agency is responsible for all protection and maintenance expenses, without any right of contribution or reimbursement from the disposal agency.

**Assistance in Disposition**

**§ 102–75.985 Is the landholding agency required to assist the disposal agency in the disposition process?**

Yes, the landholding agency must cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the landholding agency must absorb the entire cost of such actions.

**Subpart E—Abandonment, Destruction, or Donation to Public Bodies**

**§ 102–75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?**

Yes, subject to the restrictions in this subpart, any Federal agency having control of real property that has no commercial value or for which the estimated cost of continued care and handling exceeds the estimated proceeds from its sale, may—

(a) Abandon or destroy Government-owned improvements and related personal property located on privately-owned land;

(b) Destroy Government-owned improvements and related personal property located on Government-owned land (abandonment of such property is not authorized); or

(c) Donate to public bodies any Government-owned real property (land and/or improvements and related personal property), or interests therein.

**Dangerous Property**

**§ 102–75.995 May Federal agencies dispose of dangerous property?**

No, property that is dangerous to public health or safety must be made harmless or have adequate safeguards in place before it can be abandoned, destroyed, or donated to public bodies.

**Determinations**

**§ 102–75.1000 How is the decision made to abandon, destroy, or donate property?**

No property shall be abandoned, destroyed, or donated by a Federal agency under § 102–75.990, unless a duly authorized official of that agency determines, in writing, that—

(a) The property has no commercial value; or

(b) The estimated cost of its continued care and handling exceeds the estimated proceeds from its sale.

**§ 102–75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?**

Only a duly authorized official of that agency not directly accountable for the subject property can make the determination.

**§ 102–75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?**

A reviewing authority must approve determinations made under § 102–75.1000 before any such disposal, whenever all the property proposed to be disposed of by a Federal agency has

a current estimated fair market value of more than \$50,000.

**Restrictions**

**§ 102–75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?**

Yes, Federal agencies must obtain prior concurrence of GSA before donating to public bodies—

(a) Improvements on land or related personal property having a current estimated fair market value in excess of \$250,000; and

(b) Land, regardless of cost.

**Disposal Costs**

**§ 102–75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?**

Yes, any public body receiving donated improvements on land or related personal property must pay the disposal costs associated with the donation, such as dismantling, removal, and the cleaning up of the premises.

**Abandonment and Destruction**

**§ 102–75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?**

A Federal agency may not abandon or destroy improvements on land or related personal property unless a duly authorized official of that agency finds, in writing, that donating the property is not feasible. This written finding is in addition to the determination prescribed in §§ 102–75.1000, 102–75.1005, and 102–75.1010. If donating the property becomes feasible at any time prior to actually abandoning or destroying the property, the Federal agency must donate it.

**§ 102–75.1030 May Federal agencies abandon or destroy property in any manner they decide?**

No, Federal agencies may not abandon or destroy property in a manner that is detrimental or dangerous to public health or safety or that will infringe on the rights of other persons.

**§ 102–75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?**

Yes, GSA must concur in an agency's abandonment or destruction of improvements on land or related personal property prior to abandoning or destroying such improvements on land or related personal property—

(a) That are of permanent type construction; or

(b) The retention of which would enhance the value of the underlying

land, if it were to be made available for sale or lease.

**§ 102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?**

Except as provided in § 102–75.1045, a Federal agency must not abandon or destroy improvements on land or related personal property until after it has given public notice of the proposed abandonment or destruction. This notice must be given in the area in which the property is located, must contain a general description of the property to be abandoned or destroyed, and must include an offering of the property for sale. A copy of the notice must be given to the GSA regional property disposal office for the region in which the property is located.

**§ 102–75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?**

Yes, property can be abandoned or destroyed without public notice if—

(a) Its value is so low or the cost of its care and handling so great that retaining the property to post public notice is clearly not economical;

(b) Health, safety, or security considerations require its immediate abandonment or destruction; or

(c) The assigned mission of the agency might be jeopardized by the delay, and a duly authorized Federal agency official finds in writing, with respect to paragraph (a), (b), or (c) of this section, and a reviewing authority approves this finding. The finding must be in addition to the determinations prescribed in §§ 102–75.1000, 102–75.1005, 102–75.1010, and 102–75.1025.

**§ 102–75.1050 Is there any property for which this subpart does not apply?**

Yes, this subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to 40 U.S.C. 550(c) or (d).

**Subpart F—Delegations**

**Delegation to the Department of Defense (DoD)**

**§ 102–75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?**

GSA delegates to the Secretary of Defense the authority to determine that Federal agencies do not need Department of Defense controlled excess real property and related personal

property having a total estimated fair market value, including all the component units of the property, of less than \$50,000; and to dispose of the property by means deemed most advantageous to the United States.

**§ 102–75.1060 What must the Secretary of Defense do before determining that DoD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?**

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

**§ 102–75.1065 When using a delegation of real property disposal authority under this subpart, is DoD required to report excess property to GSA?**

No, although the authority in this delegation must be used following the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

**§ 102–75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?**

Yes, the Secretary of Defense may redelegate the authority delegated in § 102–75.1055 to any officer or employee of the Department of Defense.

**Delegation to the Department of Agriculture (USDA)**

**§ 102–75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?**

GSA delegates authority to the Secretary of Agriculture to determine that Federal agencies do not need USDA-controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than \$50,000; and to dispose of the property by means deemed most advantageous to the United States.

**§ 102–75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?**

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

**§ 102–75.1085 When using a delegation of real property disposal authority under this subpart, is USDA required to report excess property to GSA?**

No, although the authority in this delegation must be used following the

provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code and its implementing regulations.

**§ 102–75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?**

Yes, the Secretary of Agriculture may redelegate authority delegated in § 102–75.1075 to any officer or employee of the Department of Agriculture.

**Delegation to the Department of the Interior**

**§ 102–75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?**

GSA delegates authority to the Secretary of the Interior to—

(a) Maintain custody, control, and accountability for mineral resources in, on, or under Federal real property that the Administrator or his designee occasionally designates as currently utilized, excess, or surplus to the Government's needs;

(b) Dispose of mineral resources by lease and to administer those leases that are made; and

(c) Determine that Federal agencies do not need Department of the Interior controlled excess real property and related personal property with an estimated fair market value, including all components of the property, of less than \$50,000; and to dispose of the property by means most advantageous to the United States.

**§ 102–75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?**

Yes, the Secretary of the Interior may redelegate this authority to any officer, official, or employee of the Department of the Interior.

**§ 102–75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?**

Under this authority, the Secretary of the Interior is responsible for—

(a) Maintaining proper inventory records, as head of the landholding agency;

(b) Monitoring the minerals as necessary, as head of the landholding agency, to prevent unauthorized mining or removal of the minerals;

(c) Securing any appraisals deemed necessary by the Secretary;

(d) Coordinating with all surface landowners, Federal or otherwise, to prevent unnecessary interference with the surface use;

(e) Restoring damaged or disturbed lands after removal of the mineral deposits;

(f) Notifying the Administrator of General Services when the disposal of

all marketable mineral deposits is complete;

(g) Complying with the applicable environmental laws and regulations, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); and the implementing regulations issued by the Council on Environmental Quality (40 CFR part 1500); section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) and the Department of Commerce implementing regulations (15 CFR parts 923 and 930);

(h) Forwarding promptly to the Administrator of General Services copies of any agreements executed under this authority; and

(i) Providing the Administrator of General Services with an annual accounting of the proceeds received from leases executed under this authority.

#### Native American-Related Delegations

##### **§ 102-75.1110 What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?**

GSA delegates authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education to transfer and to retransfer to each other, upon request, any of the property of each agency that is being used and will continue to be used in the administration of any functions relating to the Native Americans. The term property, as used in this delegation, includes real property and such personal property as the Secretary making the transfer or retransfer determines to be related personal property. The Departments must exercise the authority conferred in this section following applicable GSA regulations issued pursuant to the provisions of Chapter 5 of Subtitle I of Title 40 of the United States Code.

##### **§ 102-75.1115 Are there any limitations or restrictions on this delegation of authority?**

This authority must be used only in connection with property that the appropriate Secretary determines—

(a) Comprises a functional unit;

(b) Is located within the United States; and

(c) Has an acquisition cost of \$100,000 or less, provided that the transfer or retransfer does not include property situated in any area that is recognized as an urban area or place as identified by the most recent decennial census.

##### **§ 102-75.1120 Does the property have to be Federally screened?**

No, screening is not required because it would accomplish no useful purpose, since the property subject to transfer or retransfer will continue to be used in the administration of any functions relating to Native Americans.

##### **§ 102-75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?**

Yes, transfers/retransfers under this delegation can be at no cost or without consideration, except—

(a) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(b) Whenever reimbursement at fair market value is required by subpart B of this part (entitled "Utilization of Excess Real Property").

##### **§ 102-75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?**

The Secretary requesting the transfer or retransfer must certify in writing that no funds are available to acquire the property. The Secretary transferring or retransferring the property may make any determination necessary that would otherwise be made by GSA to carry out the authority contained in this delegation.

##### **§ 102-75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?**

Yes, the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education may redelegate any of the authority contained in this delegation to any officers or employees of their respective departments.

#### Subpart G—Conditional Gifts of Real Property to Further the Defense Effort

##### **§ 102-75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?**

Any Federal agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of Chapter 582—Public Law 537 (July 27, 1954) must notify the appropriate GSA regional property disposal office and must submit to GSA a recommendation indicating whether the Government should accept or reject the gift. Nothing in this subpart shall be construed as applicable to the acceptance of gifts under the provisions

of other laws. Following receipt of such notification and recommendation, GSA must—

(a) Consult with the interested agencies before it may accept or reject such conditional gifts of real property on behalf of the United States or before it transfers such conditional gifts of real property to an agency; and

(b) Advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

##### **§ 102-75.1145 What action must the Federal agency receiving an offer of a conditional gift take?**

Prior to notifying the appropriate GSA regional property disposal office, the receiving Federal agency must acknowledge receipt of the offer in writing and advise the donor that the offer will be referred to the appropriate GSA regional property disposal office. The receiving agency must not indicate acceptance or rejection of the gift on behalf of the United States at this time. The receiving agency must provide a copy of the acknowledgment with the notification and recommendation to the GSA regional property disposal office.

##### **§ 102-75.1150 What happens to the gift if GSA determines it to be acceptable?**

When GSA determines that the gift is acceptable and can be accepted and used in the form in which it was offered, GSA must designate an agency and transfer the gift without reimbursement to this agency to use as the donor intended.

##### **§ 102-75.1155 May an acceptable gift of property be converted to money?**

GSA can determine whether or not a gift of property can and should be converted to money. After conversion, GSA must deposit the funds with the Treasury Department for transfer to an appropriate account that will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

#### Subpart H—Use of Federal Real Property to Assist the Homeless

##### Definitions

##### **§ 102-75.1160 What definitions apply to this subpart?**

*Applicant* means any representative of the homeless that has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

*Checklist or property checklist* means the form developed by HUD for use by landholding agencies to report the

information to be used by HUD in making determinations of suitability.

*Classification* means a property's designation as unutilized, underutilized, excess, or surplus.

*Day* means one calendar day, including weekends and holidays.

*Eligible organization* means a State, unit of local government, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State law to enter into an agreement with the Federal Government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

*Excess property* means any property under the control of any Executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 524.

*GSA* means the United States General Services Administration.

*HHS* means the United States Department of Health and Human Services.

*Homeless* means—

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a State law.

*HUD* means the United States Department of Housing and Urban Development.

*ICH* means the Interagency Council on the Homeless.

*Landholding agency* means a Federal department or agency with statutory authority to control real property.

*Lease* means an agreement between either HHS for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Pub. L. 100-526, 10 U.S.C. 2687), and the applicant, giving rise to the

relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

*Non-profit organization* means an organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

*Permit* means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

*Property* means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

*Regional Homeless Coordinator* means a regional coordinator of the Interagency Council on the Homeless.

*Representative of the Homeless* means a State or local government agency, or private non-profit organization that provides, or proposes to provide, services to the homeless.

*Screen* means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

*State Homeless Coordinator* means a State contact person designated by a State to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with the McKinney-Vento Homeless Assistance Act of 1987, as amended (42 U.S.C. 11320).

*Suitable property* means that HUD has determined that a particular property satisfies the criteria listed in § 102-75.1185.

*Surplus property* means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

*Underutilized* means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable

landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

*Unsuitable property* means that HUD has determined that a particular property does not satisfy the criteria in § 102-75.1185.

*Unutilized property* means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable Executive agency or occupied in caretaker status only.

## Applicability

### § 102-75.1165 What is the applicability of this subpart?

(a) This part applies to Federal real property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus, and is, therefore, subject to the provisions of title V of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

- (1) Machinery and equipment.
- (2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.
- (3) Properties subject to special legislation directing a particular action.
- (4) Properties subject to a court order.
- (5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).
- (6) Mineral rights interests.
- (7) Air Space interests.
- (8) Indian Reservation land subject to 40 U.S.C. 523.
- (9) Property interests subject to reversion.
- (10) Easements.
- (11) Property purchased in whole or in part with Federal funds, if title to the property is not held by a Federal landholding agency as defined in this part.

## Collecting the Information

### § 102-75.1170 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus in surveys conducted by the agencies under 40 U.S.C. 524, Executive Order 12512, and subpart H of this part.

Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency annual report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that—

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the **Federal Register**. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

### Suitability Determination

#### § 102–75.1175 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties that were reported pursuant to the canvass described in § 102–75.1170(a), HUD will determine, under criteria set forth in § 102–75.1185, which properties are suitable for use as facilities to assist the homeless and

report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1185.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1190(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the **Federal Register** of a notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the **Federal Register** that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1–800–927–7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the **Federal Register**.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in § 102–75.1160.

(3) The request for review must specify the grounds on which it is based, *i.e.*, that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (*e.g.*, that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to § 102–75.1190(a), upon receipt of which HUD will promptly publish the determination in the **Federal Register**. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

### Real Property Reported Excess to GSA

#### § 102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA that has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to § 102–75.1180(g) and will advise HUD of the availability of the property for use by the homeless as provided in § 102–75.1180(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in § 102–75.1180(c) through § 102–75.1180(g).

(c) If a landholding agency reports a property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will

reflect any change in classification, *i.e.*, from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response that includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the **Federal Register**, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See GSA Customer Guide to Real Property Disposal.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in § 102-75.965.

### Suitability Criteria

#### § 102-75.1185 What are suitability criteria?

(a) All properties, buildings, and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (*e.g.*, where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2,000 feet of an industrial,

commercial, or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers that provide the heating or power source for the property, and that meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations, and tank trucks are not included in this category, and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100-year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage, extensive deterioration, friable asbestos, PCBs, natural hazardous substances such as radon, periodic flooding, sinkholes, or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (*e.g.*, can be reached only by crossing private property and there is no established right or means of entry).

(b) [Reserved]

### Determination of Availability

#### § 102-75.1190 What is the policy concerning determination of availability statements?

(a) Within 45 days after receipt of a letter from HUD pursuant to § 102-75.1170(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in § 102-75.1185.

(2) In the case of excess property that had previously been reported to GSA—

(i) A statement that there is no compelling Federal need for the property and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

### Public Notice of Determination

#### § 102-75.1195 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the last-45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the **Federal Register** a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number: 1-800-927-7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the **Federal Register**. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties reported pursuant to § 102-75.1170(b).

(e) HUD will publish an annual list of properties determined suitable, but that agencies reported unavailable, including the reasons such properties are not available.

(f) Copies of the lists published in the **Federal Register** will be available for

review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

### Application Process

#### § 102-75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

(a) *Holding period.* (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the **Federal Register**.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address: Director, Division of Health Facilities Planning, Public Health Service, Room 17A-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60-day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if—

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following:

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a “representative of the homeless,” as specified in § 102-75.1160. The applicant must document its authority to hold real property. Private, non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions, except for, in the case of leasing the property, local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Nondiscrimination in Federally-Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color,

national origin, religion, sex, age, familial status, or disability in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR § 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed, in writing, the applicable unit of general local government responsible for providing sewer, water, police, and fire services of its proposed program.

(10) *Zoning and local use restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant applying for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to § 102-75.1200(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.* (1) Upon receipt of an application, HHS will review it for

completeness and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations that have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application, HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in § 102–75.1200(e)(2) and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

#### Action on Approved Applications

##### § 102–75.1205 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute

the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year, unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property pursuant to a lease or permit.

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with § 102–75.965, custody and accountability of the property will remain throughout the lease term with the agency that initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under 40 U.S.C. 550 (education, health, public park or recreation, and historic monument uses) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under 40 U.S.C. 550(c) or (d) (education and health uses).

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement that details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to 40 U.S.C. 550, and section 501(f) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of § 102–75.1200 and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of lease term and reversion of title.* Lessees and grantees

will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal Government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal Government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

#### Unsuitable Properties

##### § 102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency will defer, for 20 days after the date that notice of a property is published in the **Federal Register**, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA, if a representative of the homeless files an appeal of unsuitability pursuant to § 102–75.1175(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

#### No Applications Approved

##### § 102–75.1215 What action must be taken if there is no expression of interest?

(a) At the end of the 60-day holding period described in § 102–75.1200(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

**Subpart I—Screening of Federal Real Property****§ 102–75.1220 How do landholding agencies find out if excess Federal real property is available?**

If agencies report excess real and related personal property to GSA, GSA conducts a “Federal screening” for the property. Federal screening consists of developing a “Notice of Availability” and circulating the “Notice” among all Federal landholding agencies for a maximum of 30 days.

**§ 102–75.1225 What details are provided in the “Notice of Availability”?**

The “Notice of Availability” describes the physical characteristics of the property; it also provides information on location, hazards or restrictions, contact information, and a date by which an interested Federal agency must respond in writing to indicate a definite or potential need for the property.

**§ 102–75.1230 How long does an agency have to indicate its interest in the property?**

Generally, agencies have 30 days to express written interest in the property. However, sometimes GSA has caused to conduct an expedited screening of the real property and the time allotted for responding is less than 30 days. The Notice of Availability always contains a “respond by” date.

**§ 102–75.1235 Where should an agency send its written response to the “Notice of Availability”?**

Look for the contact information provided in the Notice of Availability. Most likely, an agency will be directed to contact one of GSA’s regional offices.

**§ 102–75.1240 Who, from the interested landholding agency, should submit the written response to GSA’s “Notice of Availability”?**

An authorized official of the landholding agency must sign the written response to the Notice of Availability. An “authorized official” is one who is responsible for acquisition and/or disposal decisions (e.g., head of the agency or official designee).

**§ 102–75.1245 What happens after the landholding agency properly responds to a “Notice of Availability”?**

The landholding agency has 60 days (from the expiration date of the “Notice of Availability”) to submit a formal transfer request for the property. Absent a formal request for transfer within the prescribed 60 days, GSA may, at its discretion, pursue other disposal options.

**§ 102–75.1250 What if the agency is not quite sure it wants the property and needs more time to decide?**

If the written response to the “Notice of Availability” indicates a potential need, then the agency has an additional 30 days (from the expiration date of the “Notice of Availability”) to determine whether or not it has a definite requirement for the property, and then 60 days to submit a transfer request.

**§ 102–75.1255 What happens when more than one agency has a valid interest in the property?**

GSA will attempt to facilitate an equitable solution between the agencies involved. However, the Administrator has final decision making authority in determining which requirement aligns with the Federal Government’s best interests.

**§ 102–75.1260 Does GSA conduct Federal screening on every property reported as excess real property?**

No. GSA may waive the Federal screening for excess real property when it determines that doing so is in the best interest of the Federal Government.

Below is a sample list of some of the factors GSA may consider when making the decision to waive Federal screening. This list is a representative sample and is not all-inclusive:

- (a) There is a known Federal need;
- (b) The property is located within the boundaries of tribal lands;
- (c) The property has known disposal limitations precluding further Federal use (e.g., title and/or utilization restrictions; reported excess specifically for participation in the Relocation Program; reported excess for transfer to the current operating contractor who will continue production according to the terms of the disposal documents; directed for disposal by law or special legislation);

(d) The property will be transferred to a “potentially responsible party” (PRP) that stored, released, or disposed of hazardous substances at the Government-owned facility;

- (e) The property is an easement;
- (f) The excess property is actually a leasehold interest where there are Government-owned improvements with substantial value and cannot be easily removed;

(g) Government-owned improvements on Government-owned land, where the land is neither excess nor expected to become excess; or

(h) Screening for public benefit uses, except for the McKinney-Vento homeless screening, for specific property disposal considerations (see § 102–75.351).

**§ 102–75.1265 Are extensions granted to the Federal screening and response timeframes?**

Generally, no. GSA believes the timeframes are sufficient for agencies to make a decision and respond. Requests for extensions must be strongly justified and approved by the appropriate GSA Regional Administrator. For example, agencies may request an extension of time to submit their formal transfer request if they are not promptly provided GSA’s estimate of FMV after submission of the initial expression of interest. Agencies requesting extensions must also submit an agreement accepting responsibility for providing and funding protection and maintenance for the requested property during the period of the extension until the property is transferred to the requesting agency or the requesting agency notifies GSA that it is no longer interested in the property. This assumption of protection and maintenance responsibility also applies to extensions associated with a requesting agency’s request for an exception from the 100 percent reimbursement requirement (see § 102–75.205).

**§ 102–75.1270 How does an agency request a transfer of Federal real property?**

Agencies must use GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

**§ 102–75.1275 Does a requesting agency have to pay for excess real property?**

Yes. GSA is required by law to obtain full fair market value (as determined by the Administrator) for all real property (see § 102–75.190), except when a transfer without reimbursement has been authorized (see § 102–75.205). GSA, upon receipt of a valid expression of interest, will promptly provide each interested landholding agency with an estimate of fair market value for the property. GSA may transfer property without reimbursement, if directed to do so by law or special legislation and for the following purposes:

- (a) Migratory Bird Management under Pub. L. 80–537, as amended by Pub. L. 92–432.
- (b) Wildlife Conservation under Pub. L. 80–537.
- (c) Federal Correctional facilities.
- (d) Joint Surveillance System.

**§ 102–75.1280 What happens if the property has already been declared surplus and an agency discovers a need for it?**

GSA can redesignate surplus property as excess property, if the agency requests the property for use in direct support of its mission and GSA is satisfied that this transfer would be in

the best interests of the Federal Government.

**§ 102–75.1285 How does GSA transfer excess real property to the requesting agency?**

GSA transfers the property via letter assigning “custody and accountability” for the property to the requesting agency. Title to the property is held in the name of the United States; however, the requesting agency becomes the landholding agency and is responsible for providing and funding protection and maintenance for the property.

**§ 102–75.1290 What happens if the landholding agency requesting the property does not promptly accept custody and accountability?**

(a) The requesting agency must assume protection and maintenance responsibilities for the property within 30 days of the date of the letter assigning custody and accountability for the property.

(b) After notifying the requesting agency, GSA may, at its discretion, pursue other disposal options.

■ 6. Revise part 102–76 to read as follows:

**PART 102–76—DESIGN AND CONSTRUCTION**

**Subpart A—General Provisions**

Sec.

102–76.5 What is the scope of this part?

102–76.10 What basic design and construction policy governs Federal agencies?

**Subpart B—Design and Construction**

102–76.15 What are design and construction services?

102–76.20 What issues must Federal agencies consider in providing site planning and landscape design services?

102–76.25 What standards must Federal agencies meet in providing architectural and interior design services?

102–76.30 What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?

**National Environmental Policy Act of 1969**

102–76.35 What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?

102–76.40 To which real property actions does NEPA apply?

102–76.45 What procedures must Federal agencies follow to implement the requirements of NEPA?

**Sustainable Development**

102–76.50 What is sustainable development?

102–76.55 What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?

**Subpart C—Architectural Barriers Act**

102–76.60 To which facilities does the Architectural Barriers Act Apply?

102–76.65 What standards must facilities subject to the Architectural Barriers Act meet?

102–76.70 When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?

102–76.75 What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in § 102–76.65(a)?

102–76.80 What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?

102–76.85 What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a)?

102–76.90 Who has the authority to waive or modify the standards in § 102–76.65(a)?

102–76.95 What recordkeeping responsibilities do Federal agencies have?

**Authority:** 40 U.S.C. 121(c) (in furtherance of the Administrator’s authorities under 40 U.S.C. 3301–3315 and elsewhere as included under 40 U.S.C. 581 and 583; E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340).

**Subpart A—General Provisions**

**§ 102–76.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

**§ 102–76.10 What basic design and construction policy governs Federal agencies?**

Federal agencies, upon approval from GSA, are bound by the following basic design and construction policies:

(a) Provide the highest quality services for designing and constructing new Federal facilities and for repairing and altering existing Federal facilities. These services must be timely, efficient, and cost effective.

(b) Use a distinguished architectural style and form in Federal facilities that reflects the dignity, enterprise, vigor and stability of the Federal Government.

(c) Follow nationally recognized model building codes and other applicable nationally recognized codes

that govern Federal construction to the maximum extent feasible and consider local building code requirements. (See 40 U.S.C. 3310 and 3312.)

(d) Design Federal buildings to have a long life expectancy and accommodate periodic changes due to renovations.

(e) Make buildings cost effective, energy efficient, and accessible to and usable by the physically disabled.

(f) Provide for building service equipment that is accessible for maintenance, repair, or replacement without significantly disturbing occupied space.

(g) Consider ease of operation when selecting mechanical and electrical equipment.

(h) Agencies must follow the prospectus submission and approval policy identified in §§ 102–73.35 and 102–73.40 of this chapter.

**Subpart B—Design and Construction**

**§ 102–76.15 What are design and construction services?**

Design and construction services are—

(a) Site planning and landscape design;

(b) Architectural and interior design; and

(c) Engineering systems design.

**§ 102–76.20 What issues must Federal agencies consider in providing site planning and landscape design services?**

In providing site planning and design services, Federal agencies must—

(a) Make the site planning and landscape design a direct extension of the building design;

(b) Make a positive contribution to the surrounding landscape;

(c) Consider requirements (other than procedural requirements) of local zoning laws and laws relating to setbacks, height, historic preservation, and aesthetic qualities of a building;

(d) Identify areas for future building expansion in the architectural and site design concept for all buildings where an expansion need is identified to exist;

(e) Create a landscape design that is a pleasant, dynamic experience for occupants and visitors to Federal facilities and, where appropriate, encourage public access to and stimulate pedestrian traffic around the facilities. Coordinate the landscape design with the architectural characteristics of the building;

(f) Comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, for each project; and

(g) Consider the vulnerability of the facility as well as the security needs of the occupying agencies, consistent with the Interagency Security Committee standards and guidelines.

**§ 102–76.25 What standards must Federal agencies meet in providing architectural and interior design services?**

Federal agencies must design distinctive and high quality Federal facilities that meet all of the following standards:

(a) Reflect the local architecture in buildings through the use of building form, materials, colors, or detail. Express a quality of permanence in the building interior similar to the building exterior.

(b) Provide individuals with disabilities ready access to, and use of, the facilities in accordance with the standards in § 102–76.65.

(c) Use metric specifications in construction where the metric system is the accepted industry standard, and to the extent that such usage is economically feasible and practical.

(d) Provide for the design of security systems to protect Federal workers and visitors and to safeguard facilities against criminal activity and/or terrorist activity. Security design must support the continuity of Government operations during civil disturbances, natural disasters and other emergency situations.

(e) Design and construct facilities that meet or exceed the energy performance standards applicable to Federal buildings in 10 CFR part 435.

**§ 102–76.30 What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?**

Federal agencies must follow the seismic safety standards identified in § 102–80.45 of this chapter.

**National Environmental Policy Act of 1969**

**§ 102–76.35 What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?**

The purpose of NEPA is to—

(a) Declare a national policy which will encourage productive and enjoyable harmony between man and his environment;

(b) Promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;

(c) Enrich the understanding of the ecological systems and natural resources important to the Nation; and

(d) Establish a Council on Environmental Quality (CEQ).

**§ 102–76.40 To which real property actions does NEPA apply?**

NEPA applies to actions that may have an impact on the quality of the human environment, including leasing, acquiring, developing, managing and disposing of real property.

**§ 102–76.45 What procedures must Federal agencies follow to implement the requirements of NEPA?**

Federal agencies must follow the procedures identified in the Council on Environmental Quality's NEPA implementing regulations, 40 CFR 1500–1508. In addition, Federal agencies must follow the standards that they have promulgated to implement CEQ's regulations.

**Sustainable Development**

**§ 102–76.50 What is sustainable development?**

Sustainable development means integrating the decision-making process across the organization, so that every decision is made to promote the greatest long-term benefits. It means eliminating the concept of waste and building on natural processes and energy flows and cycles; and recognizing the interrelationship of our actions with the natural world.

**§ 102–76.55 What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?**

In keeping with the objectives of Executive Order 13123, "Greening of the Government Through Efficient Energy Management," and Executive Order 13101, "Greening of the Government Through Waste Prevention, Recycling, and Federal Acquisition," Federal agencies must apply sustainable development principles to the siting, design, and construction of new facilities, which include—

- (a) Optimizing site potential;
- (b) Minimizing non-renewable energy consumption;
- (c) Using environmentally preferable products;
- (d) Protecting and conserving water;
- (e) Enhancing indoor environmental quality; and
- (f) Optimizing operational and maintenance practices.

**Subpart C—Architectural Barriers Act**

**§ 102–76.60 To which facilities does the Architectural Barriers Act apply?**

(a) The Architectural Barriers Act applies to any facility that is intended for use by the public or that may result in the employment or residence therein of individuals with disabilities, which is to be—

(1) Constructed or altered by, or on behalf of, the United States;

(2) Leased in whole or in part by the United States;

(3) Financed in whole or in part by a grant or loan made by the United States, if the building or facility is subject to standards for design, construction, or alteration issued under the authority of the law authorizing such a grant or loan; or

(4) Constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(b) The Architectural Barriers Act does not apply to any privately owned residential facility unless leased by the Government for subsidized housing programs, and any facility on a military reservation designed and constructed primarily for use by able bodied military personnel.

**§ 102–76.65 What standards must facilities subject to the Architectural Barriers Act meet?**

(a) GSA adopts Appendices C and D to 36 CFR part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10) as the Architectural Barriers Act Accessibility Standard. Facilities subject to the Architectural Barriers Act (other than facilities in 102–76.65(b) and (c)) must meet the Architectural Barriers Act Accessibility Standard if the construction or alteration commences, or the lease is entered into after May 8, 2006. If the construction or alteration commences, or the lease is entered into before May 8, 2006, the facility must meet the Uniform Federal Accessibility Standards. The construction or alteration of a facility for which plans and specifications were completed or substantially completed on or before May 8, 2006, is permitted to meet the Uniform Federal Accessibility Standards if the construction or alteration is commenced by May 8, 2008. The Architectural Barriers Act Accessibility Standard and the Uniform Federal Accessibility Standards are available at [www.access-board.gov](http://www.access-board.gov).

(b) Residential facilities subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development.

(c) Department of Defense and United States Postal Service facilities subject to the Architectural Barriers Act must meet the standards prescribed by those agencies.

**§ 102–76.70** When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?

For facilities subject to the standards in § 102–76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations when they exceed 20 percent of the costs of the alterations to the primary function area. If a series of small alterations are made to areas containing a primary function and the costs of any of the alterations considered individually would not result in providing an accessible path of travel to the altered areas, the total costs of the alterations made within the three year period after the initial alteration must be considered when determining whether the costs of alterations to provide an accessible path of travel to the altered areas are disproportionate. Facilities for which new leases are entered into must comply with F202.6 of the Architectural Barriers Act Accessibility Standard without regard to whether the costs of alterations to comply with F202.6 are disproportionate to the costs of the overall alterations.

**§ 102–76.75** What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in § 102–76.65(a)?

For facilities subject to the standards in § 102–76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function include the costs associated with—

(a) Providing an accessible route to connect the altered area and site arrival points, including but not limited to interior and exterior ramps, elevators and lifts, and curb ramps;

(b) Making entrances serving the altered area accessible, including but not limited to widening doorways and installing accessible hardware;

(c) Making restrooms serving the altered area accessible, including, but not limited to, enlarging toilet stalls, installing grab bars and accessible faucet controls, and insulating pipes under lavatories;

(d) Making public telephones serving the altered area accessible, including, but not limited to, placing telephones at an accessible height, and installing amplification devices and TTYs;

(e) Making drinking fountains serving the altered area accessible; and

(f) Making parking spaces serving the altered area accessible.

**§ 102–76.80** What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in § 102–76.65(a)?

For facilities subject to the standards in § 102–76.65(a), if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations, the path of travel must be made accessible to the extent possible without exceeding 20 percent of the costs of the alterations to the primary function area. Priority should be given to those elements that will provide the greatest access in the following order:

(a) An accessible route and an accessible entrance;

(b) At least one accessible restroom for each sex or a single unisex restroom;

(c) Accessible telephones;

(d) Accessible drinking fountains; and

(e) Accessible parking spaces.

**§ 102–76.85** What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a)?

For purposes of providing an accessible route in leased facilities subject to the standards in § 102–76.65(a), a primary function area is an area that contains a major activity for which the leased facility is intended. Primary function areas include areas where services are provided to customers or the public, and offices and other work areas in which the activities of the Federal agency using the leased facility are carried out.

**§ 102–76.90** Who has the authority to waive or modify the standards in § 102–76.65(a)?

The Administrator of General Services has the authority to waive or modify the standards in § 102–76.65(a) on a case-by-case basis if the agency head or GSA department head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary.

**§ 102–76.95** What recordkeeping responsibilities do Federal agencies have?

(a) The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction or alteration of a facility and on each lease for a facility subject to the standards in § 102–76.65(a) containing one of the following statements:

(1) The standards have been or will be incorporated in the design, the construction or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standards will be incorporated in the design, the construction or the alteration.

(3) The leased facility meets the standards, or has been or will be altered to meet the standards.

(4) The standards have been waived or modified by the Administrator of General Services, and a copy of the waiver or modification is included with the statement.

(b) If a determination is made that a facility is not subject to the standards in § 102–76.65(a) because the Architectural Barriers Act does not apply to the facility, the head of the Federal agency must ensure that documentation is maintained to justify the determination.

■ 7. Revise part 102–77 to read as follows:

**PART 102–77—ART-IN-ARCHITECTURE**

**Subpart A—General Provisions**

Sec.

102–77.5 What is the scope of this part?

102–77.10 What basic Art-in-Architecture policy governs Federal agencies?

**Subpart B—Art-in-Architecture**

102–77.15 Who funds the Art-in-Architecture efforts?

102–77.20 With whom should Federal agencies collaborate when commissioning and selecting art for Federal buildings?

102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-Architecture?

Authority: 40 U.S.C. 121 and 3306.

**Subpart A—General Provisions**

**§ 102–77.5** What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

**§ 102–77.10** What basic Art-in-Architecture policy governs Federal agencies?

Federal agencies must incorporate fine arts as an integral part of the total building concept when designing new Federal buildings, and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture, and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

**Subpart B—Art-in-Architecture****§ 102–77.15 Who funds the Art-in-Architecture efforts?**

To the extent not prohibited by law, Federal agencies must fund the Art-in-Architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings, or of completing major repairs and alterations of existing buildings. Funding for qualifying projects, including new construction, building purchases, other building acquisition, or prospectus-level repair and alteration projects, must be in a range determined by the Administrator of General Services.

**§ 102–77.20 With whom should Federal agencies collaborate with when commissioning and selecting art for Federal buildings?**

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in selecting appropriate artwork. Federal agencies should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual, and historic interests and values of a community. In addition, Federal agencies should work collaboratively with the architect of the building and art professionals, when commissioning and selecting art for Federal buildings. Federal agencies should commission artwork that is diverse in style and media.

**§ 102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-Architecture?**

Yes, Federal agencies should provide Art-in-Architecture that receives appropriate national and local visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

■ 8. Revise part 102–78 to read as follows:

**PART 102–78—HISTORIC PRESERVATION****Subpart A—General Provisions**

Sec.

102–78.5 What is the scope of this part?

102–78.10 What basic historic preservation policy governs Federal agencies?

**Subpart B—Historic Preservation**

102–78.15 What are historic properties?

102–78.20 Are Federal agencies required to identify historic properties?

102–78.25 What is an undertaking?

102–78.30 Who are consulting parties?

102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?

102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects an historic or cultural property?

102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?

102–78.50 What historic preservation services must Federal agencies provide?

102–78.55 For which properties must Federal agencies provide historic preservation services?

102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?

102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?

102–78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?

Authority: 16 U.S.C. 470h–2; 40 U.S.C. 121(c) and 581.

**Subpart A—General Provisions****§ 102–78.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The policies in this part are in furtherance of GSA's preservation program under section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and apply to properties under the jurisdiction or control of the Administrator and to any Federal agencies operating, maintaining or protecting such properties under a delegation of authority from the Administrator.

**§ 102–78.10 What basic historic preservation policy governs Federal agencies?**

To protect, enhance and preserve historic and cultural property under their control, Federal agencies must consider the effects of their undertakings on historic and cultural properties and give the Advisory Council on Historic Preservation (Advisory Council), the State Historic Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings.

**Subpart B—Historic Preservation****§ 102–78.15 What are historic properties?**

Historic properties are those that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) as more specifically defined at 36 CFR 800.16.

**§ 102–78.20 Are Federal agencies required to identify historic properties?**

Yes, Federal agencies must identify all National Register or National Register-eligible historic properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

**§ 102–78.25 What is an undertaking?**

The term undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those—

(a) Carried out by or on behalf of the agency;

(b) Carried out with Federal financial assistance; or

(c) Requiring a Federal permit, license, or approval.

**§ 102–78.30 Who are consulting parties?**

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (*i.e.*, Section 106 of the National Historic Preservation Act), which requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State Historic Preservation Officer; the Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; other individuals and organizations with a demonstrated interest in the undertaking; and the Advisory Council (if it elects to participate in the consultation).

**§ 102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?**

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

**§ 102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?**

Federal agencies must not perform an undertaking that could alter, destroy, or modify an historic or cultural property

until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on historic or cultural properties to the extent that it is feasible and prudent to do so. Federal agencies must follow the specific guidance on the protection of historic and cultural properties in 36 CFR part 800.

**§ 102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?**

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

**§ 102–78.50 What historic preservation services must Federal agencies provide?**

Federal agencies must provide the following historic preservation services:

(a) Prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property.

(b) Investigate for historic and cultural factors all proposed sites for direct and leased construction.

**§ 102–78.55 For which properties must Federal agencies assume historic preservation responsibilities?**

Federal agencies must assume historic preservation responsibilities for real property assets under their custody and control. Federal agencies occupying space in buildings under the custody and control of other Federal agencies must obtain approval from the agency having custody and control of the building.

**§ 102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?**

Yes, Executive Order 13006 requires Federal agencies that have a mission requirement to locate in an urban area to give first consideration to space in historic buildings and districts inside central business areas. Agencies may give a price preference of up to 10 percent to space in historic buildings and districts, in accordance with §§ 102–73.120 and 102–73.125 of this chapter.

**§ 102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?**

Federal agencies must—  
(a) To the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected

agency purposes. Agencies are required to get the Secretary of the Interior's approval of the plans of transferees of surplus Federally-owned historic properties; and

(b) Review all proposed excess actions to identify any properties listed in or eligible for listing in the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.

**§ 102–78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?**

Federal agencies must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency provides evidence that the Federal agency has met its National Historic Preservation Act responsibilities.

■ 9. Revise part 102–79 to read as follows:

**PART 102–79—ASSIGNMENT AND UTILIZATION OF SPACE**

**Subpart A—General Provisions**

Sec.

102–79.5 What is the scope of this part?

102–79.10 What basic assignment and utilization of space policy governs an Executive agency?

**Subpart B—Assignment and Utilization of Space**

102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?

**Assignment of Space**

102–79.20 What standard must Executive agencies promote when assigning space?

**Child Care**

102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?

**Fitness Centers**

102–79.30 May Federal agencies allot space in Federal buildings for establishing fitness centers?

102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?

**Federal Credit Unions**

102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?

102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

**Utilization of Space**

102–79.50 What standard must Executive agencies promote in their utilization of space?

102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

102–79.60 Are agencies required to use historic properties available to the agency?

**Outleasing**

102–79.65 May Executive agencies outlease space on major public access levels, courtyards and rooftops of public buildings?

**Siting Antennas on Federal Property**

102–79.70 May Executive agencies assess fees against other Executive agencies for antenna placements and supporting services?

102–79.75 May Executive agencies assess fees for antenna placements against public service organizations for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?

102–79.80 May Executive agencies assess fees for antenna placements against telecommunication service providers for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?

102–79.85 What policy must Executive agencies follow concerning the placement of commercial antennas on Federal property?

102–79.90 What criteria must Executive agencies consider when evaluating antenna siting requests?

102–79.95 Who is responsible for the costs associated with providing access to antenna sites?

102–79.100 What must Federal agencies do with antenna siting fees that they collect?

**Integrated Workplace**

102–79.105 What is the Integrated Workplace?

102–79.110 What Integrated Workplace policy must Federal agencies strive to promote?

102–79.111 Where may Executive agencies find additional information on Integrated Workplace concepts?

**Public Access Defibrillation Programs**

102–79.115 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

**Authority:** 40 U.S.C. 121(c); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; and E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

**Subpart A—General Provisions**

**§ 102–79.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or

subject to, the authorities of the Administrator of General Services.

**§ 102–79.10 What basic assignment and utilization of space policy governs an Executive agency?**

Executive agencies must provide a quality workplace environment that supports program operations, preserves the value of real property assets, meets the needs of the occupant agencies, and provides child care and physical fitness facilities in the workplace when adequately justified. An Executive agency must promote maximum utilization of Federal workspace, consistent with mission requirements, to maximize its value to the Government.

**Subpart B—Assignment and Utilization of Space**

**§ 102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?**

Executive agencies must provide assignment and utilization services that will maximize the value of Federal real property resources and improve the productivity of the workers housed therein.

**Assignment of Space**

**§ 102–79.20 What standard must Executive agencies promote when assigning space?**

Executive agencies must promote the optimum use of space for each assignment at an economical cost to the Government, provide quality workspace that is delivered and occupied in a timely manner, and assign space based on mission requirements.

**Child Care**

**§ 102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?**

Yes, in accordance with 40 U.S.C. 590, Federal agencies can allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees if such—

- (a) Space is available;
- (b) Agency determines that such space will be used to provide child care services to children of whom at least 50 percent have one parent or guardian who is a Federal Government employee; and
- (c) Agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

**Fitness Centers**

**§ 102–79.30 May Federal agencies allot space in Federal buildings for establishing fitness centers?**

Yes, in accordance with 5 U.S.C. 7901, Federal agencies can allot space in Federal buildings for establishing fitness programs.

**§ 102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?**

Federal agencies must address the following elements in their planning effort for establishing fitness programs:

- (a) A survey indicating employee interest in the program.
- (b) A three-to five-year implementation plan demonstrating long-term commitment to physical fitness/health for employees.
- (c) A health related orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate follow-up activities.
- (d) Identification of a person skilled in prescribing exercise to direct the fitness program.
- (e) An approach that will consider key health behavior related to degenerative disease, including smoking and nutrition.
- (f) A modest facility that includes only the essentials necessary to conduct a program involving cardiovascular and muscular endurance, strength activities, and flexibility.
- (g) Provision for equal opportunities for men and women, and all employees, regardless of grade level.

**Federal Credit Unions**

**§ 102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?**

Yes, in accordance with 12 U.S.C. 1770, Federal agencies may allot space in Federal buildings to Federal credit unions without charge for rent or services if—

- (a) At least 95 percent of the membership of the credit union to be served by the allotment of space is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families; and
- (b) Space is available.

**§ 102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?**

Federal agencies may provide without charge to Federal credit union services such as—

- (a) Lighting;
- (b) Heating and cooling;

- (c) Electricity;
- (d) Office furniture;
- (e) Office machines and equipment;
- (f) Telephone service (including installation of lines and equipment and other expenses associated with telephone service); and
- (g) Security systems (including installation and other expenses associated with security systems).

**Utilization of Space**

**§ 102–79.50 What standard must Executive agencies promote in their utilization of space?**

Executive agencies, when acquiring or utilizing Federally owned or leased space under Title 40 of the United States Code, must promote efficient utilization of space. Where there is no Federal agency space need, Executive agencies must make every effort to maximize the productive use of vacant space through the issuance of permits, licenses or leases to non-Federal entities to the extent authorized by law. (For vacant property determined excess to agency needs, refer to part 102-75, Real Property Disposal.)

**§ 102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?**

- Yes, Federal agencies must—
- (a) First utilize space in Government-owned and Government-leased buildings; and
  - (b) If there is no suitable space in Government-owned and Government-leased buildings, utilize space in buildings under the custody and control of the U.S. Postal Service; and
  - (c) If there is no suitable space in buildings under the custody and control of the U.S. Postal Service, agencies may acquire real estate by lease, purchase, or construction, as specified in part 102–73 of this chapter.

**§ 102–79.60 Are agencies required to use historic properties available to the agency?**

Yes, Federal agencies must assume responsibility for the preservation of the historic properties they own or control. Prior to acquiring, constructing or leasing buildings, agencies must use, to the maximum extent feasible, historic properties already owned or leased by the agency (16 U.S.C. 470h–2).

**Outleasing**

**§ 102–79.65 May Executive agencies outlease space on major public access levels, courtyards and rooftops of public buildings?**

Yes. Authority to execute such outleases may be delegated by the Administrator based on authorities provided by the Public Buildings

Cooperative Use Act (40 U.S.C. § 581(h)), the proceeds of which are to be deposited into GSA's Federal Buildings Fund. Using such authority, Executive agencies, upon approval from GSA, may—

(a) Enter into leases of space on major public access levels, courtyards and rooftops of any public building with persons, firms, or organizations engaged in commercial, cultural, educational, or recreational activities (as defined in 40 U.S.C. 3306);

(b) Establish rental rates for such leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the building; and

(c) Use leases that contain terms and conditions that the Administrator deems necessary to promote competition and protect the public interest.

#### **Siting Antennas on Federal Property**

##### **§ 102–79.70 May Executive agencies assess fees against other Executive agencies for antenna placements and supporting services?**

Yes. Executive agencies, upon approval from GSA, may assess fees for placement of antennas and supporting services against other agencies (that own these antennas) under 40 U.S.C. 586(c) and 40 U.S.C. 121(e). Unless a differing rate has been approved by the Administrator, such fees or charges must approximate commercial charges for comparable space and services (*i.e.*, market rates). The proceeds from such charges or fees must be credited to the appropriation or fund initially charged for providing the space or services. Any amounts in excess of actual operating and maintenance costs must be credited to miscellaneous receipts unless otherwise provided by law. The charges or fees assessed by the Administrator for the placement of antennas and supporting services in GSA-controlled space are generally credited to GSA's Federal Buildings Fund.

##### **§ 102–79.75 May Executive agencies assess fees for antenna placements against public service organizations for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?**

Yes. Executive agencies in GSA-controlled space, upon approval from GSA, may assess fees for antenna placements against public service organizations under 40 U.S.C. 581(h) and 40 U.S.C. 121(e). Such fees or rental rates must be equivalent to the prevailing commercial rate for comparable space devoted to commercial antenna placements in the vicinity of the public building and the

proceeds from such charges or fees must be credited to GSA's Federal Buildings Fund.

##### **§ 102–79.80 May Executive agencies assess fees for antenna placements against telecommunication service providers for antenna site outleases on major pedestrian access levels, courtyards, and rooftops of public buildings?**

Yes. GSA, or other Executive agencies, upon approval from GSA, may charge fees based on market value to telecommunication service providers for antenna placements in public buildings. Market value should be equivalent to the prevailing commercial rate for comparable space for commercial antenna placements in the vicinity of the public building. Such fees must be credited to GSA's Federal Buildings Fund.

##### **§ 102–79.85 What policy must Executive agencies follow concerning the placement of commercial antennas on Federal property?**

Executive agencies will make antenna sites available on a fair, reasonable, and nondiscriminatory basis. Collocation of antennas should be encouraged where there are multiple antenna siting requests for the same location. In cases where this is not feasible and space availability precludes accommodating all antenna siting applicants, competitive procedures may be used. This should be done in accordance with applicable Federal, State and local laws and regulations, and consistent with national security concerns. In making antenna sites available, agencies must avoid electromagnetic intermodulations and interferences. To the maximum extent practicable, when placing antennas for the provision of telecommunication services to the Federal Government, agencies should use redundant and physically separate entry points into the building and physically diverse local network facilities in accordance with guidance issued by the Office of Management and Budget.

##### **§ 102–79.90 What criteria must Executive agencies consider when evaluating antenna siting requests?**

When evaluating antenna siting requests, Executive agencies must consider issues such as—

(a) Public health and safety with respect to the antenna installation and maintenance;

(b) Aesthetics;

(c) Effects on historic districts, sites, buildings, monuments, structures, or other objects pursuant to the National Historic Preservation Act of 1966, as

amended, and implementing regulations;

(d) Protection of natural and cultural resources (*e.g.*, National Parks and Wilderness areas, National Wildlife Refuge systems);

(e) Compliance with the appropriate level of review and documentation as necessary under the National Environmental Policy Act of 1969, as amended, and implementing regulations of each Federal department and agency responsible for the antenna siting project, and the Federal Aviation Administration, the National Telecommunications and Information Administration, and other relevant departments and agencies;

(f) Compliance with the Federal Communications Commission's (FCC) guidelines for radiofrequency exposure, ET Docket No. 93–62, entitled "Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation," issued August 1, 1996, and any other order on reconsideration relating to radiofrequency guidelines and their enforcement. These are updated guidelines for meeting health concerns that reflect the latest scientific knowledge in this area, and are supported by Federal health and safety agencies such as the Environmental Protection Agency and the Food and Drug Administration; and

(g) Any requirements of the Federal agency managing the facility, FCC, Federal Aviation Administration, National Telecommunications and Information Administration, and other relevant departments and agencies. To the maximum extent practicable, when placing antennas for the provision of telecommunication services to the Federal Government, agencies should use redundant and physically separate entry points into the building and physically diverse local network facilities in accordance with guidance issued by the Office of Management and Budget. In addition, the National Capital Planning Commission should be consulted for siting requests within the Washington, D.C. metropolitan area.

##### **§ 102–79.95 Who is responsible for the costs associated with providing access to antenna sites?**

The telecommunications service provider is responsible for any reasonable costs to Federal agencies associated with providing access to antenna sites, including obtaining appropriate clearance of provider personnel for access to buildings or land deemed to be security sensitive as is done with service contractor personnel. OMB Circular A–25, entitled "User

Charges,” revised July 8, 1993, provides guidelines that agencies should use to assess fees for Government services and for the sale or use of Government property or resources. For antenna sites on non-GSA property, see also the Department of Commerce Report on “Improving Rights-of-Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment” (April 2004) beginning at page 26. Under 40 U.S.C. 1314, GSA is covered in granting easements and permits to support the installation of antennas and cabling across raw land in support of constructing new and improving existing telecommunication infrastructures provided that such installation does not negatively impact on the Government.

**§ 102–79.100 What must Federal agencies do with antenna siting fees that they collect?**

The account into which an antenna siting fee is to be deposited depends on the authority under which the antenna site is made available and the fee assessed. For GSA-controlled property outleased under 40 U.S.C. 581(h) or section 412 of Division H of public law 108–447, the fee is to be deposited into GSA’s Federal Building Fund. For surplus property outleased under 40 U.S.C. 543, the fee is to be deposited in accordance with the provisions of Subchapter IV of Chapter 5 of Subtitle I of Title 40 of the United States Code. For siting fees collected under other statutory authorities, the fees might be deposited into miscellaneous receipts, an account of the landholding agency, or as otherwise provided by law. Federal agencies should consult with their agency’s legal advisors before depositing antenna proceed from sites on agency-controlled Federal property.

**Integrated Workplace**

**§ 102–79.105 What is the Integrated Workplace?**

The Integrated Workplace, developed by the GSA Office of Governmentwide Policy, is a comprehensive, multidisciplinary approach to developing workspace and work strategies that best support an organization’s strategic business goals and work processes, and have the flexibility to accommodate the changing needs of the occupants and the organization. Integrated Workplace concepts support the objectives of Executive Order 13327, “Federal Real Property Asset Management,” which calls for the enhancement of Federal agency productivity through an improved working environment.

**§ 102–79.110 What Integrated Workplace policy must Federal agencies strive to promote?**

Federal agencies must strive to design work places that—

- (a) Are developed using sustainable development concepts (see § 102–76.55);
- (b) Align with the organization’s mission and strategic plan;
- (c) Serve the needs and work practices of the occupants;
- (d) Can be quickly and inexpensively adjusted by the user to maximize his or her productivity and satisfaction;
- (e) Are comfortable, efficient, and technologically advanced and allow people to accomplish their work in the most efficient way;
- (f) Meet the office’s needs and can justify its cost through the benefits gained;
- (g) Are developed with an integrated building systems approach;
- (h) Are based on a life cycle cost analysis that considers both facility and human capital costs over a substantial time period; and
- (i) Support alternative workplace arrangements, including telecommuting, hoteling, virtual offices, and other distributive work arrangements (see Part 102–74, Subpart F—Telework).

**§ 102–79.111 Where may Executive agencies find additional information on Integrated Workplace concepts?**

The GSA Office of Governmentwide Policy provides additional guidance in its publication entitled “Innovative Workplace Strategies.”

**Public Access Defibrillation Programs**

**§ 102–79.115 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?**

Federal agencies electing to establish a public access defibrillation program in a Federal facility must follow the guidelines, entitled “Guidelines for Public Access Defibrillation Programs in Federal Facilities,” which can be obtained from the Office of Governmentwide Policy, Office of Real Property (MP), General Services Administration, 1800 F Street, NW, Washington, DC 20405.

- 10. Revise part 102–80 to read as follows:

**PART 102–80—SAFETY AND ENVIRONMENTAL MANAGEMENT**

**Subpart A—General Provisions**

Sec.

- 102–80.5 What is the scope of this part?
- 102–80.10 What are the basic safety and environmental management policies for real property?

**Subpart B—Safety and Environmental Management**

**Asbestos**

- 102–80.15 What are Federal agencies’ responsibilities concerning the assessment and management of asbestos?

**Radon**

- 102–80.20 What are Federal agencies’ responsibilities concerning the abatement of radon?

**Indoor Air Quality**

- 102–80.25 What are Federal agencies’ responsibilities concerning the management of indoor air quality?

**Lead**

- 102–80.30 What are Federal agencies’ responsibilities concerning lead?

**Hazardous Materials and Wastes**

- 102–80.35 What are Federal agencies’ responsibilities concerning the monitoring of hazardous materials and wastes?

**Underground Storage Tanks**

- 102–80.40 What are Federal agencies’ responsibilities concerning the management of underground storage tanks?

**Seismic Safety**

- 102–80.45 What are Federal agencies’ responsibilities concerning seismic safety in Federal facilities?

**Risks and Risk Reduction Strategies**

- 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?
- 102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

**Facility Assessments**

- 102–80.60 Are Federal agencies responsible for performing facility assessments?

**Incident Investigation**

- 102–80.65 What are Federal agencies’ responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

**Responsibility for Informing Tenants**

- 102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

**Assessment of Environmental Issues**

- 102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

**Subpart C—Accident and Fire Prevention**

- 102–80.80 With what general accident and fire prevention policy must Federal agencies comply?

**State and Local Codes**

- 102–80.85 Are Federally owned and leased buildings exempt from State and local code requirements in fire protection?

**Fire Administration Authorization Act of 1992**

102–80.90 Is the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) relevant to fire protection engineering?

102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

**Automatic Sprinkler Systems**

102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

**Equivalent Level of Safety Analysis**

102–80.105 What information must be included in an equivalent level of safety analysis?

102–80.110 What must an equivalent level of safety analysis indicate?

102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

102–80.130 Who must perform the equivalent level of safety analysis?

102–80.135 Who is a qualified fire protection engineer?

**Room of Origin**

102–80.140 What is meant by “room of origin”?

**Flashover**

102–80.145 What is meant by “flashover”?

**Reasonable Worst Case Fire Scenario**

102–80.150 What is meant by “reasonable worst case fire scenario”?

**Authority:** 40 U.S.C. 121(c) and 581–593.

**Subpart A—General Provisions****§ 102–80.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The responsibilities for safety and environmental management under this part are intended to apply to GSA or those Federal agencies operating in GSA space pursuant to a GSA delegation of authority.

**§ 102–80.10 What are the basic safety and environmental management policies for real property?**

The basic safety and environmental management policies for real property are that Federal agencies must—

(a) Provide for a safe and healthful work environment for Federal employees and the visiting public;

(b) Protect Federal real and personal property;

(c) Promote mission continuity;

(d) Provide reasonable safeguards for emergency forces if an incident occurs;

(e) Assess risk;

(f) Make decision makers aware of risks; and

(g) Act promptly and appropriately in response to risk.

**Subpart B—Safety and Environmental Management****Asbestos****§ 102–80.15 What are Federal agencies’ responsibilities concerning the assessment and management of asbestos?**

Federal agencies have the following responsibilities concerning the assessment and management of asbestos:

(a) Inspect and assess buildings for the presence and condition of asbestos-containing materials. Space to be leased must be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to U.S. Environmental Protection Agency (EPA) guidance must be implemented.

(b) Manage in-place asbestos that is in good condition and not likely to be disturbed.

(c) Abate damaged asbestos and asbestos likely to be disturbed. Federal agencies must perform a pre-alteration asbestos assessment for activities that may disturb asbestos.

(d) Not use asbestos in new construction, renovation/modernization or repair of their owned or leased space. Unless approved by GSA, Federal agencies must not obtain space with asbestos through purchase, exchange, transfer, or lease, except as identified in paragraph (a) of this section.

(e) Communicate all written and oral asbestos information about the leased space to tenants.

**Radon****§ 102–80.20 What are Federal agencies’ responsibilities concerning the abatement of radon?**

Federal agencies have the following responsibilities concerning the abatement of radon in space when radon levels exceed current EPA standards:

(a) Retest abated areas and make lessors retest, as required, abated areas to adhere to EPA standards.

(b) Test non-public water sources (in remote areas for projects such as border stations) for radon according to EPA guidance. Radon levels that exceed current applicable EPA standards must be mitigated. Federal agencies must

retest, as required, to adhere to EPA standards.

**Indoor Air Quality****§ 102–80.25 What are Federal agencies’ responsibilities concerning the management of indoor air quality?**

Federal agencies must assess indoor air quality of buildings as part of their safety and environmental facility assessments. Federal agencies must respond to tenant complaints on air quality and take appropriate corrective action where air quality does not meet applicable standards.

**Lead****§ 102–80.30 What are Federal agencies’ responsibilities concerning lead?**

Federal agencies have the following responsibilities concerning lead in buildings:

(a) Test space for lead-based paint in renovation projects that require sanding, welding or scraping painted surfaces.

(b) Not remove lead based paint from surfaces in good condition.

(c) Test all painted surfaces for lead in proposed or existing child care centers.

(d) Abate lead-based paint found in accordance with U.S. Department of Housing and Urban Development (HUD) Lead-Based Paint Guidelines, available by writing to HUD USER, P.O. Box 6091, Rockville, MD 20850.

(e) Test potable water for lead in all drinking water outlets.

(f) Take corrective action when lead levels exceed the HUD Guidelines.

**Hazardous Materials and Wastes****§ 102–80.35 What are Federal agencies’ responsibilities concerning the monitoring of hazardous materials and wastes?**

Federal agencies’ responsibilities concerning the monitoring of hazardous materials and wastes are as follows:

(a) Monitor the transport, use, and disposition of hazardous materials and waste in buildings to provide for compliance with GSA, Occupational Safety and Health Administration (OSHA), Department of Transportation, EPA, and applicable State and local requirements. In addition to those operating in GSA space pursuant to a delegation of authority, tenants in GSA space must comply with these requirements.

(b) In leased space, include in all agreements with the lessor requirements that hazardous materials stored in leased space are kept and maintained according to applicable Federal, State, and local environmental regulations.

## Underground Storage Tanks

### § 102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

Federal agencies have the following responsibilities concerning the management of underground storage tanks in real property:

(a) Register, manage and close underground storage tanks, including heating oil and fuel oil tanks, in accordance with GSA, EPA, and applicable State and local requirements.

(b) Require the party responsible for tanks they use but do not own to follow these requirements and to be responsible for the cost of compliance.

### Seismic Safety

#### § 102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

Federal agencies must follow the standards issued by the Interagency Committee on Seismic Safety in Construction (ICSSC) as the minimum level acceptable for use by Federal agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings.

### Risks and Risk Reduction Strategies

#### § 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?

Yes, Federal agencies must identify and estimate safety and environmental management risks and appropriate risk reduction strategies for buildings. Federal agencies occupying as well as operating buildings must identify any safety and environmental management risks and report or correct the situation, as appropriate. Federal agencies must use the applicable national codes and standards as a guide for their building operations.

#### § 102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

Yes, Federal agencies must manage the execution of risk reduction projects in buildings they operate. Federal agencies must identify and take appropriate action to eliminate hazards and regulatory noncompliance.

### Facility Assessments

#### § 102–80.60 Are Federal agencies responsible for performing facility assessments?

Yes, Federal agencies must evaluate facilities to comply with GSA's safety and environmental program and

applicable Federal, State and local environmental laws and regulations. Federal agencies should conduct these evaluations in accordance with schedules that are compatible with repair and alteration and leasing operations.

### Incident Investigation

#### § 102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

Federal agencies have the following responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents in buildings they operate:

(a) Investigate all incidents regardless of severity.

(b) Form Boards of Investigation for incidents resulting in serious injury, death, or significant property losses.

### Responsibility for Informing Tenants

#### § 102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Yes, Federal agencies must inform their tenants of the condition and management of their facility safety and environment. Agencies operating GSA buildings must report any significant facility safety or environmental concerns to GSA.

### Assessment of Environmental Issues

#### § 102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Federal agencies must assess required environmental issues throughout planning and project development so that the environmental impacts of a project are considered during the decision making process.

### Subpart C—Accident and Fire Prevention

#### § 102–80.80 With what general accident and fire prevention policy must Federal agencies comply?

Federal agencies must—

(a) Comply with the occupational safety and health standards established in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596); Executive Order 12196; 29 CFR part 1960; and applicable safety and environmental management criteria identified in this part;

(b) Not expose occupants and visitors to unnecessary risks;

(c) Provide safeguards that minimize personal harm, property damage, and impairment of Governmental

operations, and that allow emergency forces to accomplish their missions effectively;

(d) Follow accepted fire prevention practices in operating and managing buildings;

(e) To the maximum extent feasible, comply with one of the nationally recognized model building codes and with other nationally-recognized codes in their construction or alteration of each building in accordance with 40 U.S.C. 3312; and

(f) Use the applicable national codes and standards as a guide for their building operations.

### State and Local Codes

#### § 102–80.85 Are Federally owned and leased buildings exempt from State and local code requirements in fire protection?

Federally owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 3312, each building constructed or altered by a Federal agency must be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other nationally recognized codes. Leased buildings are subject to local code requirements and inspection.

### Fire Administration Authorization Act of 1992

#### § 102–80.90 Is the Fire Administration Authorization Act of 1992 (Public Law 102–522) relevant to fire protection engineering?

Yes, the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) requires sprinklers or an equivalent level of safety in certain types of Federal employee office buildings, Federal employee housing units, and Federally assisted housing units (15 U.S.C. 2227).

#### § 102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

Yes, the Fire Administration Authorization Act applies to all Federal agencies and all Federally owned and leased buildings in the United States.

### Automatic Sprinkler Systems

#### § 102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

The performance objective of the automatic sprinkler system is that it must be capable of protecting human lives. Sprinklers should be capable of controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system should activate prior to the onset of flashover.

### Equivalent Level of Safety Analysis

#### § 102–80.105 What information must be included in an equivalent level of safety analysis?

The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The analysis should include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities that impact fire protection and life safety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues that must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

#### § 102–80.110 What must an equivalent level of safety analysis indicate?

To be acceptable, the analysis must indicate that the existing and/or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Fire Administration Authorization Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed.

#### § 102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

Yes, the following are three options for establishing that an equivalent level of safety exists:

(a) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code complying building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the required safe egress time. Available safe egress time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a

number of assumed reasonable worst case fire scenarios including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an equivalent level of safety.

(b) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an equivalent level of safety.

(c) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

#### § 102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System (Alternative Approaches to Life Safety, NEPA 101A) should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predictive capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

#### § 102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

The head of the agency responsible for physical improvements in the

facility or providing Federal assistance or a designated representative will determine the acceptability of each equivalent level of safety analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies should maintain a record of each accepted equivalent level of safety analysis and provide copies to fire departments or other local authorities for use in developing pre-fire plans.

#### § 102–80.130 Who must perform the equivalent level of safety analysis?

A qualified fire protection engineer must perform the equivalent level of safety analysis.

#### § 102–80.135 Who is a qualified fire protection engineer?

A qualified fire protection engineer is defined as an individual with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(a) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection or fire safety engineering, plus a minimum of 4 years work experience in fire protection engineering.

(b) A professional engineer (P.E. or similar designation) registered in Fire Protection Engineering.

(c) A professional engineer (P.E. or similar designation) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

### Room of Origin

#### § 102–80.140 What is meant by “room of origin”?

Room of origin means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m<sup>2</sup> (2000 ft<sup>2</sup>), including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the room of origin to the extent it did not exceed the 200 m<sup>2</sup> (2000 ft<sup>2</sup>) limitation.

**Flashover****§ 102–80.145 What is meant by “flashover”?**

Flashover means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m<sup>2</sup> (1.8 Btu/ft<sup>2</sup>/sec).

**Reasonable Worst Case Fire Scenario****§ 102–80.150 What is meant by “reasonable worst case fire scenario”?**

Reasonable worst case fire scenario means a combination of an ignition source, fuel items, and a building location likely to produce a fire that would have a significant adverse impact on the building and its occupants. The development of reasonable worst case scenarios must include consideration of types and forms of fuels present (e.g., furniture, trash, paper, chemicals), potential fire ignition locations (e.g., bedroom, office, closet, corridor), occupant capabilities (e.g., awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

■ 11. Revise part 102–81 to read as follows:

**PART 102–81—SECURITY****Subpart A—General Provisions**

Sec.

102–81.5 What is the scope of this part?

102–81.10 What basic security policy governs Federal agencies?

**Subpart B—Security**

102–81.15 Who is responsible for upgrading and maintaining security standards in each existing Federally owned and leased facility?

102–81.20 Are the security standards for new Federally owned and leased facilities the same as the standards for existing Federally owned and leased facilities?

102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new Federally owned and leased facilities?

102–81.30 What information must job applicants at child care centers reveal?

**Authority:** 40 U.S.C. 121(c), 581–593, and 1315.

**Subpart A—General Provisions****§ 102–81.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings Service (PBS), operating under, or

subject to, the authorities of the Administrator of General Services.

**§ 102–81.10 What basic security policy governs Federal agencies?**

Federal agencies on Federal property under the charge and control of the Administrator and having a security delegation of authority from the Secretary of the Department of Homeland Security must provide for the security and protection of the real estate they occupy, including the protection of persons within the property.

**Subpart B—Security****§ 102–81.15 Who is responsible for upgrading and maintaining security standards in each existing Federally owned and leased facility?**

In a June 28, 1995, Presidential Policy Memorandum for Executive Departments and Agencies, entitled “Upgrading Security at Federal Facilities” (see the Weekly Compilation of Presidential Documents, vol. 31, p. 1148), the President directed that Executive agencies must, where feasible, upgrade and maintain security in facilities they own or lease under their own authority to the minimum standards specified in the Department of Justice’s June 28, 1995, study entitled “Vulnerability Assessment of Federal Facilities.” The study may be obtained by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

**§ 102–81.20 Are the security standards for new Federally owned and leased facilities the same as the standards for existing Federally owned and leased facilities?**

No, the minimum standards specified in the Department of Justice’s June 28, 1995, study entitled “Vulnerability Assessment of Federal Facilities” identifies the minimum-security standards that agencies must adhere to for all existing owned and leased Federal facilities. As specified in § 102–81.25, new Federally owned and leased facilities must be designed to meet the standards identified in the document entitled “Interagency Security Committee Security Design Criteria for New Federal Office Buildings and Major Modernization Projects,” dated May 28, 2001. The security design criteria for new facilities takes into consideration technology developments, new cost consideration, the experience of practitioners applying the criteria, and the need to balance security requirements with public building environments that remain lively, open, and accessible.

**§ 102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new Federally owned and leased facilities?**

No, the Interagency Security Committee Security Design Criteria—

(a) Apply to new construction of general purpose office buildings and new or lease-construction of courthouses occupied by Federal employees in the United States and not under the jurisdiction and/or control of the Department of Defense. The criteria also apply to lease-construction projects being submitted to Congress for appropriations or authorization. Where prudent and appropriate, the criteria apply to major modernization projects; and

(b) Do not apply to airports, prisons, hospitals, clinics, and ports of entry, or to unique facilities such as those classified by the Department of Justice Vulnerability Assessment Study as Level V. Nor will the criteria overrule existing Federal laws and statutes, and other agency standards that have been developed for special facilities, such as border stations and child care centers.

**§ 102–81.30 What information must job applicants at child care centers reveal?**

Anyone who applies for employment (including volunteer positions) at a child care facility, located on Federally controlled property (including Federally leased property), must reveal any arrests and convictions on the job application. Employment at a child care facility means any position that involves work with minor children, such as a teacher, daycare worker, or school administrator.

■ 12. Revise part 102–82 to read as follows:

**PART 102–82—UTILITY SERVICES****Subpart A—General Provisions**

Sec.

102–82.5 What is the scope of this part?

102–82.10 What basic utility services policy govern Executive agencies?

**Subpart B—Utility Services**

102–82.15 What utility services must Executive agencies provide?

102–82.20 What are Executive agencies’ rate intervention responsibilities?

102–82.25 What are Executive agencies’ responsibilities concerning the procurement of utility services?

**Authority:** 40 U.S.C. 121(c) and 501.

**Subpart A—General Provisions****§ 102–82.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings Service (PBS), operating under, or

subject to, the authorities of the Administrator of General Services.

**§ 102–82.10 What basic utility services policy govern Executive agencies?**

Executive agencies procuring, managing or supplying utility services under Title 40 of the United States Code must provide or procure services that promote economy and efficiency with due regard to the mission responsibilities of the agencies concerned.

**Subpart B—Utility Services**

**§ 102–82.15 What utility services must Executive agencies provide?**

Executive agencies must negotiate with public utilities to procure utility services and, where appropriate, provide rate intervention services in proceedings (see §§ 102–72.100 and 102–72.105 of this chapter) before Federal and State utility regulatory bodies.

**§ 102–82.20 What are Executive agencies' rate intervention responsibilities?**

Where the consumer interests of the Federal Government will be significantly affected and upon receiving a delegation of authority from GSA, Executive agencies must provide representation in proceedings involving utility services before Federal and State regulatory bodies. Specifically, these responsibilities include instituting formal or informal action before Federal and State regulatory bodies to contest the level, structure, or applicability of rates or service terms of utility suppliers. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security.

**§ 102–82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?**

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense, when the Secretary determines it to be in the best interests of national security, must provide for the procurement of utility services (such as commodities and utility rebate programs), as required, and must procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service. Executive agencies, upon receiving a delegation of authority from GSA, may enter into contracts for utility services for periods not exceeding ten years (40 U.S.C. 501(b)(1)(B)).

■ 13. Revise part 102–83 to read as follows:

**PART 102–83—LOCATION OF SPACE**

**Subpart A—General Provisions**

Sec.

102–83.5 What is the scope of this part?

102–83.10 What basic location of space policy governs an Executive agency?

102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

**Subpart B—Location of Space**

**Delineated Area**

102–83.20 What is a delineated area?

102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?

102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?

102–83.35 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?

102–83.40 Who must approve the final delineated area?

102–83.45 Where may Executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?

**Rural Areas**

102–83.50 What is the Rural Development Act of 1972?

102–83.55 What is a rural area?

102–83.60 What is an urbanized area?

102–83.65 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

**Urban Areas**

102–83.70 What is Executive Order 12072?

102–83.75 What is Executive Order 13006?

102–83.80 What is an urban area?

102–83.85 What is a central business area?

102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?

102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?

102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?

102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?

102–83.110 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?

102–83.115 What is a central city?

102–83.120 What happens if an agency has a need to be in a specific urban area that

is not a central city in a metropolitan area?

**Preference to Historic Properties**

102–83.125 Are Executive agencies required to give preference to historic properties when acquiring leased space?

**Application of Socioeconomic Considerations**

102–83.130 When must agencies consider the impact of a location decision on low- and moderate-income employees?

102–83.135 With whom must agencies consult in determining the availability of low- and moderate-income housing?

Appendix to Part 102–83—Memorandum of Understanding Between the Department of Housing and Urban Development and the General Services Administration Concerning Low- and Moderate-Income Housing

**Authority:** 40 U.S.C. 121(c); E.O. 12072; and E.O. 13006.

**Subpart A—General Provisions**

**§ 102–83.5 What is the scope of this part?**

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

**§ 102–83.10 What basic location of space policy governs an Executive agency?**

Each Executive agency is responsible for identifying its geographic service area and the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies.

**§ 102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?**

Yes, Federal agencies must follow the hierarchy of consideration identified in § 102–79.55 of this chapter.

**Subpart B—Location of Space**

**Delineated Area**

**§ 102–83.20 What is a delineated area?**

Delineated area means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

**§ 102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?**

Each Federal agency is responsible for identifying the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable laws, regulations, and Executive Orders.

**§ 102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?**

Yes, Federal agencies must also consider real estate, labor, and other operational costs and applicable local incentives, when identifying the delineated area.

**§ 102–83.35 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?**

In accordance with the Competition in Contracting Act of 1984, as amended (41 U.S.C. 253(a)), Executive agencies must consider whether restricting the delineated area for obtaining leased space to the central business area (CBA) will provide for adequate competition when acquiring leased space. Where an Executive agency determines that the delineated area must be expanded beyond the CBA to provide adequate competition, the agency may expand the delineated area in consultation with local officials. Executive agencies must continue to include the CBA in such expanded areas.

**§ 102–83.40 Who must approve the final delineated area?**

Federal agencies conducting the procurement must approve the final delineated area for site acquisitions and lease actions and must confirm that the final delineated area complies with the requirements of all applicable laws, regulations, and Executive Orders.

**§ 102–83.45 Where may Executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?**

GSA's PBS provides guidance in its Customer Guide to Real Property on the process for appealing GSA's decisions and recommendations concerning delineated areas.

**Rural Areas**

**§ 102–83.50 What is the Rural Development Act of 1972?**

The Rural Development Act of 1972, as amended (7 U.S.C. 2204b–1), directs Federal agencies to develop policies and procedures to give first priority to the location of new offices and other Federal facilities in rural areas. The intent of the Rural Development Act is to revitalize and develop rural areas and to help foster a balance between rural and urban America.

**§ 102–83.55 What is a rural area?**

As defined in 7 U.S.C. 1991(a)(13)(A), rural area means any area other than—

(a) A city or town that has a population of greater than 50,000 inhabitants; and

(b) The urbanized area contiguous and adjacent to such a city or town.

**§ 102–83.60 What is an urbanized area?**

An urbanized area is a statistical geographic area defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

**§ 102–83.65 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?**

Yes, Executive agencies must give first priority to the location of new offices and other facilities in rural areas in accordance with the Rural Development Act (7 U.S.C. 2204b–1), unless their mission or program requirements call for locations in an urban area. First priority to the location of new offices and other facilities in rural areas must be given in accordance with the hierarchy specified in § 102–79.55 of this chapter.

**Urban Areas**

**§ 102–83.70 What is Executive Order 12072?**

Executive Order 12072, entitled “Federal Space Management,” requires all Executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in central business areas, and/or adjacent areas of similar character, to use them to make downtowns attractive places to work, conserve existing resources, and encourage redevelopment. It also directs Executive agencies to consider opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

**§ 102–83.75 What is Executive Order 13006?**

Executive Order 13006, entitled “Locating Federal Facilities on Historic Properties in Our Nation's Central Cities,” requires all Executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in historic buildings and districts within central business areas. It also directs Executive agencies to remove regulatory barriers, review their policies, and build new partnerships with the goal of enhancing participation in the National Historic Preservation program.

**§ 102–83.80 What is an urban area?**

Urban area means any metropolitan area (MA) as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 99–04, or succeeding OMB Bulletin, that does not meet the definition of rural area in § 102–83.55.

**§ 102–83.85 What is a central business area?**

Central business area (CBA) means the centralized community business area and adjacent areas of similar character, including other specific areas that may be recommended by local officials in accordance with Executive Order 12072. The CBAs are designated by local government and not by Federal agencies.

**§ 102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?**

No, Executive Orders 12072 and 13006 only apply to agencies looking for space in urban areas.

**§ 102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?**

After an agency identifies its geographic service area and delineated area within which it wishes to locate specific activities are in an urban area (*i.e.*, determined that the agency's mission requirements dictate a need to locate its facility in an urban area), Federal agencies must seek space in historic properties already under agency control, in accordance with section 110 of the National Historic Preservation Act. The National Historic Preservation Act provides that prior to purchasing, constructing or leasing new space, Federal agencies must—

(a) Consider agency-controlled historic properties within historic districts inside CBAs when locating Federal operations, in accordance with Executive Order 13006 (which, by reference, also incorporates the requirements in Executive Order 12072 and the Rural Development Act of 1972);

(b) Then consider agency-controlled developed or undeveloped sites within historic districts, if no suitable agency-controlled historic property specified in paragraph (a) of this section is available;

(c) Then consider agency-controlled historic properties outside of historic districts, if no suitable agency-controlled site exists within a historic district as specified in paragraph (b) of this section;

(d) Then consider non-historic agency-controlled properties, if no suitable agency-controlled historic properties outside of historic districts

exist as specified in paragraph (c) of this section;

(e) Then consider historic properties under the custody and control of the U.S. Postal Service, if there is no available space in non-historic agency-controlled properties specified in paragraph (d) of this section.

(f) Then consider non-historic properties under the custody and control of the U.S. Postal Service, if there is no available space in historic properties under the custody and control of the U.S. Postal Service specified in paragraph (e) of this section.

**§ 102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?**

See § 102–73.20 of this chapter.

**§ 102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?**

If no suitable space in non-historic buildings under the custody and control of the U.S. Postal Service is available, agencies may then acquire real estate by purchase, lease, or construction, in accordance with FMR part 102–73.

**§ 102–83.110 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?**

Yes, if an agency has a specific location need to be in an urban area, then Executive Orders 12072 and 13006 require that agencies should give first consideration to locating in a historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area.

**§ 102–83.115 What is a central city?**

Central cities are those central cities defined by OMB in OMB Bulletin No. 99–04, or succeeding OMB Bulletin.

**§ 102–83.120 What happens if an agency has a need to be in a specific urban area that is not a central city in a metropolitan area?**

If an agency has a need to be in a specific urban area that is not a central city in a metropolitan area, then the agency must give first consideration to locating in a historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of the appropriate metropolitan area.

**Preference to Historic Properties**

**§ 102–83.125 Are Executive agencies required to give preference to historic properties when acquiring leased space?**

Yes, Federal agencies must give a price preference when acquiring space using either the lowest price technically acceptable or the best value tradeoff source selection process. See part 102–73 of this chapter for additional guidance.

**Application of Socioeconomic Considerations**

**§ 102–83.130 When must agencies consider the impact of location decisions on low- and moderate-income employees?**

Federal agencies proposing locations for Federal construction or major lease actions involving the relocation of a major work force must consider the impact on employees with low and moderate incomes.

**§ 102–83.135 With whom must agencies consult in determining the availability of low- and moderate-income housing?**

Federal agencies must consult with the U.S. Department of Housing and Urban Development (HUD) in accordance with the Memorandum of Understanding (MOU) between HUD and GSA. The text of the HUD-GSA MOU is located in the Appendix to this part.

**APPENDIX TO PART 102–83—  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
AND THE GENERAL SERVICES  
ADMINISTRATION CONCERNING LOW-  
AND MODERATE-INCOME HOUSING**

*Purpose.* The purpose of the memorandum of understanding is to provide an effective, systematic arrangement under which the Federal Government, acting through HUD and GSA, will fulfill its responsibilities under law, and as a major employer, in accordance with the concepts of good management, to assure for its employees the availability of low- and moderate-income housing without discrimination because of race, color, religion, or national origin, and to consider the need for development and redevelopment of areas and the development of new communities and the impact on improving social and economic conditions in the area, whenever Federal Government facilities locate or relocate at new sites, and to use its resources and authority to aid in the achievement of these objectives.

1. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601) states, in section 801, that "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." Section 808(a) places the authority and responsibility for administering the Act in the Secretary of Housing and Urban Development. Section 808(d) requires all Executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of title VIII (fair housing) and to cooperate with the Secretary to further such purposes. Section 808(e)(5) provides that the Secretary of HUD shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of title VIII.

2. Section 2 of the Housing Act of 1949 (42 U.S.C. 1441) declares the national policy of " \* \* \* the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family \* \* \* ." This goal was reaffirmed in the Housing and Urban Development Act of 1968 (sections 2 and 1601; 12 U.S.C. 1701t and 42 U.S.C. 1441a).

3. By virtue of the Public Buildings Act of 1959, as amended; the Federal Property and Administrative Services Act of 1949, as amended; and Reorganization Plan No. 18 of 1950, the Administrator of General Services is given certain authority and responsibility in connection with planning, developing, and constructing Government-owned public buildings for housing Federal agencies, and for acquiring leased space for Federal agency use.

4. Executive Order 11512, February 27, 1970, sets forth the policies by which the Administrator of General Services and the heads of Executive agencies will be guided in the acquisition of both federally owned and leased office buildings and space.

5. While Executive Order No. 11512 provides that material consideration will be given to the efficient performance of the

missions and programs of the Executive agencies and the nature and functions of the facilities involved, there are six other guidelines set forth, including:

- The need for development and redevelopment of areas and the development of new communities, and the impact a selection will have on improving social and economic conditions in the area; and
- The availability of adequate low- and moderate-income housing, adequate access from other areas of the urban center, and adequacy of parking.

6. General Services Administration (GSA) recognizes its responsibility, in all its determinations with respect to the construction of Federal buildings and the acquisition of leased space, to consider to the maximum possible extent the availability of low- and moderate-income housing without discrimination because of race, color, religion, or national origin, in accordance with its duty affirmatively to further the purposes of title VIII of the Civil Rights Act of 1968 and with the authorities referred to in paragraph 2 above, and the guidelines referred to in paragraph 5 above, and consistent with the authorities cited in paragraphs 3 and 4 above. In connection with the foregoing statement, it is recognized that all the guidelines must be considered in each case, with the ultimate decision to be made by the Administrator of General Services upon his determination that such decision will improve the management and administration of governmental activities and services, and will foster the programs and policies of the Federal Government.

7. In addition to its fair housing responsibilities, the responsibilities of HUD include assisting in the development of the Nation's housing supply through programs of mortgage insurance, home ownership and rental housing assistance, rent supplements, below market interest rates, and low-rent public housing. Additional HUD program responsibilities which relate or impinge upon housing and community development include comprehensive planning assistance, metropolitan area planning coordination, new communities, relocation, urban renewal, model cities, rehabilitation loans and grants, neighborhood facilities grants, water and sewer grants, open space, public facilities loans, Operation BREAKTHROUGH, code enforcement, workable programs, and others.

8. In view of its responsibilities described in paragraphs 1 and 7 above, HUD possesses the necessary expertise to investigate, determine, and report to GSA on the availability of low- and moderate-income housing on a nondiscriminatory basis and to make findings as to such availability with respect to proposed locations for a federally-constructed building or leased space which would be consistent with such reports. HUD also possesses the necessary expertise to advise GSA and other Federal agencies with respect to actions which would increase the availability of low- and moderate-income housing on a nondiscriminatory basis, once a site has been selected for a federally-constructed building or a lease executed for space, as well as to assist in increasing the availability of such housing through its own programs such as those described in paragraph 7 above.

9. HUD and GSA agree that:

(a) GSA will pursue the achievement of low- and moderate-income housing objectives and fair housing objectives, in accordance with its responsibilities recognized in paragraph 6 above, in all determinations, tentative and final, with respect to the location of both federally constructed buildings and leased buildings and space, and will make all reasonable efforts to make this policy known to all persons, organizations, agencies and others concerned with federally owned and leased buildings and space in a manner which will aid in achieving such objectives.

(b) In view of the importance to the achievement of the objectives of this memorandum of agreement of the initial selection of a city or delineation of a general area for location of public buildings or leased space, GSA will provide the earliest possible notice to HUD of information with respect to such decisions so that HUD can carry out its responsibilities under this memorandum of agreement as effectively as possible.

(c) *Government-owned Public Buildings Projects.* (1) In the planning for each new public buildings project under the Public Buildings Act of 1959, during the survey preliminary to the preparation and submission of a project development report, representatives of the regional office of GSA in which the project is proposed will consult with, and receive advice from, the regional office of HUD, and local planning and housing authorities concerning the present and planned availability of low- and moderate-income housing on a nondiscriminatory basis in the area where the project is to be located. Such advice will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a). A copy of the prospectus for each project which is authorized by the Committees on Public Works of the Congress in accordance with the requirements of section 7(a) of the Public Buildings Act of 1959, will be provided to HUD.

(2) When a site investigation for an authorized public buildings project is conducted by regional representatives of GSA to identify a site on which the public building will be constructed, a representative from the regional office of HUD will participate in the site investigation for the purposes of providing a report on the availability of low- and moderate-income housing on a nondiscriminatory basis in the area of the investigation. Such report will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a).

(d) Major lease actions having a significant socioeconomic impact on a community: At the time GSA and the agencies who will occupy the space have tentatively delineated the general area in which the leased space must be located in order that the agencies may effectively perform their missions and programs, the regional representative of HUD will be consulted by the regional representative of GSA who is responsible for the leasing action to obtain advice from HUD concerning the availability of low- and

moderate-income housing on a nondiscriminatory basis to the delineated area. Such advice will constitute the principal basis for GSA's consideration of the availability of such housing in accordance with paragraphs 6 and 9(a). Copies of lease-construction prospectuses approved by the Committees on Public Works of the Congress in conformity with the provisions of the Independent Offices and Department of Housing and Urban Development appropriation acts, will be provided to HUD.

(e) GSA and HUD will each issue internal operating procedures to implement this memorandum of understanding within a reasonable time after its execution. These procedures shall recognize the right of HUD, in the event of a disagreement between HUD and GSA representatives at the area or regional level, to bring such disagreement to the attention of GSA officials at headquarters in sufficient time to assure full consideration of HUD's views, prior to the making of a determination by GSA.

(f) In the event a decision is made by GSA as to the location of a federally constructed building or leased space, and HUD has made findings, expressed in the advice given or a report made to GSA, that the availability to such location of low- and moderate-income housing on a nondiscriminatory basis is inadequate, the GSA shall provide the DHUD with a written explanation why the location was selected.

(g) Whenever the advice or report provided by HUD in accordance with paragraph 9(c)(1), 9(c)(2), or 9(d) with respect to an area or site indicates that the supply of low- and moderate-income housing on a nondiscriminatory basis is inadequate to meet the needs of the personnel of the agency involved, GSA and HUD will develop an affirmative action plan designed to insure that an adequate supply of such housing will be available before the building or space is to be occupied or within a period of 6 months thereafter. The plan should provide for commitments from the community involved to initiate and carry out all feasible efforts to obtain a sufficient quantity of low- and moderate-income housing available to the agency's personnel on a nondiscriminatory basis with adequate access to the location of the building or space. It should include commitments by the local officials having the authority to remove obstacles to the provision of such housing, when such obstacles exist, and to take effective steps to assure its provision. The plan should also set forth the steps proposed by the agency to develop and implement a counseling and referral service to seek out and assist its personnel to obtain such housing. As part of any plan during, as well as after its development, HUD agrees to give priority consideration to applications for assistance under its housing programs for the housing proposed to be provided in accordance with the plan.

10. This memorandum will be reviewed at the end of one year, and modified to incorporate any provision necessary to improve its effectiveness in light of actual experience.

[FR Doc. 05-21644 Filed 11-7-05; 8:45 am]

BILLING CODE 6820-RH-S



# Federal Register

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**Tuesday,  
November 8, 2005**

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**Part III**

**Office of Personnel  
Management**

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**Excepted Service; Consolidated Listing of  
Schedules; A, B, and C Exceptions; Notice**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2005, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:**  
Quasette Crowner, (202) 606-8046.

**SUPPLEMENTARY INFORMATION:** Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415, or by calling (202) 606-8046.

The following exceptions were current on June 30, 2005:

#### Schedule A

##### *Section 213.3102 Entire Executive Civil Service*

(a) Positions of Chaplain and  
Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments  
are made by the President without  
confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions.  
Appointments under this paragraph  
shall be confined to graduates of  
recognized law schools or persons  
having equivalent experience and shall  
be for periods not to exceed 14 months  
pending admission to the bar. No person  
shall be given more than one  
appointment under this paragraph.  
However, an appointment that was  
initially made for less than 14 months  
may be extended for not to exceed 14  
months in total duration.

(f) (Reserved).

(g) (Reserved).

(h) (Reserved).

(i) Temporary and less-than-full time  
positions for which examining is  
impracticable. These are:

(1) Positions in remote/isolated  
locations where examination is  
impracticable. A remote/isolated  
location is outside of the local  
commuting area of a population center  
from which an employee can reasonably  
be expected to travel on short notice  
under adverse weather and/or road  
conditions which are normal for the  
area. For this purpose, a population  
center is a town with housing, schools,  
health care, stores and other businesses  
in which the servicing examining office  
can schedule tests and/or reasonably  
expect to attract applicants. An  
individual appointed under this  
authority may not be employed in the  
same agency under a combination of  
this and any other appointment to  
positions involving related duties and  
requiring the same qualifications for  
more than 1,040 working hours in a  
service year. Temporary appointments  
under this authority may be extended in  
1-year increments, with no limit on the  
number of such extensions, as an  
exception to the service limits in  
§ 213.104.

(2) Positions for which a critical  
hiring needs exists. This includes both  
short-term positions and continuing  
positions that an agency must fill on an  
interim basis pending completion of  
competitive examining, clearances, or  
other procedures required for a longer  
appointment. Appointments under this  
authority may not exceed 30 days and  
may be extended up to an additional 30  
days if continued employment is  
essential to the agency's operations. The  
appointments may not be used to extend  
the service limit of any other appointing  
authority. An agency may not employ  
the same individual under this authority  
for more than 60 days in any 12-month  
period.

(3) Other positions for which OPM  
determines that examining is  
impracticable.

(j) Positions filled by current or  
former Federal employees eligible for  
placement under special statutory  
provisions. Appointments under this  
authority are subject to the following  
conditions:

(1) Eligible employees.

(i) Persons previously employed as  
National Guard Technicians under 32  
U.S.C. 709(a) who are entitled to  
placement under § 353.110 of this  
chapter, or who are applying for or  
receiving an annuity under the  
provisions of 5 U.S.C. 8337(h) or 5  
U.S.C. 8456 by reason of a disability that

disqualifies them from membership in  
the National Guard or from holding the  
military grade required as a condition of  
their National Guard employment;

(ii) Executive branch employees  
(other than employees of intelligence  
agencies) who are entitled to placement  
under § 353.110, but who are not  
eligible for reinstatement or  
noncompetitive appointment under the  
provisions of part 315 of this chapter.

(iii) Legislative and judicial branch  
employees and employees of the  
intelligence agencies defined in 5 U.S.C.  
2302(a)(2)(C)(ii) who are entitled to  
placement assistance under § 353.110.

(2) Employees excluded. Employees  
who were last employed in Schedule C  
or under a statutory authority that  
specified the employee served at the  
discretion, will, or pleasure of the  
agency are not eligible for appointment  
under this authority.

(3) Position to which appointed.  
Employees who are entitled to  
placement under § 353.110 will be  
appointed to a position that OPM  
determines is equivalent in pay and  
grade to the one the individual left,  
unless the individual elects to be placed  
in a position of lower grade or pay.  
National Guard Technicians whose  
eligibility is based upon a disability may  
be appointed at the same grade, or  
equivalent, as their National Guard  
Technician position or at any lower  
grade for which they are available.

(4) Conditions of appointment.

(i) Individuals whose placement  
eligibility is based on an appointment  
without time limit will receive  
appointments without time limit under  
this authority. These appointees may be  
reassigned, promoted, or demoted to  
any position within the same agency for  
which they qualify.

(ii) Individuals who are eligible for  
placement under § 353.110 based on a  
time-limited appointment will be given  
appointments for a time period equal to  
the unexpired portion of their previous  
appointment.

(k) Positions without compensation  
provided appointments thereto meet the  
requirements of applicable laws relating  
to compensation.

(l) Positions requiring the temporary  
or intermittent employment of  
professional, scientific, and technical  
experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or  
dentist employed under contract or on  
a part-time or fee basis.

(o) Positions of a scientific,  
professional or analytical nature when  
filled by bona fide members of the  
faculty of an accredited college or  
university who have special

qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associate ship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons who have been certified by State vocational rehabilitation agencies as likely to succeed. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instruction issued by the Office.

(u) Positions when filled by severely physically handicapped persons who:

(1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or  
(2) Have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg) Positions when filled by persons with psychiatric disabilities who have demonstrated their ability to perform satisfactorily under a temporary appointment [such as one authorized in

213.3102(i)(3)] or who are certified as likely to be able to perform the essential functions of the job, with or without reasonable accommodation, by a State vocational rehabilitation counselor, a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist. Upon completion of 2 years of satisfactory service under this authority, the employee can be converted, at the discretion of the agency, to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

(hh) (Reserved).

(ii) Positions of Presidential Fellow, GS–9 and 11, in the Presidential Management Fellows Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj)–(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full-time, part-time, or intermittent basis.

#### *Section 213.3103 Executive Office of the President*

(a) Office of Administration.

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget.  
(1) Not to exceed 15 positions at grades GS–5/15.

(c) Council on Environmental Quality.  
(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) National Security Council.

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy.

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy.

(1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and

other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

*Section 213.3104 Department of State*

(a) Office of the Secretary.

(1) All positions, GS-15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) American Embassy, Paris, France.

(1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)-(f) (Reserved).

(g) Bureau of Population, Refugees, and Migration.

(1) Not to exceed 10 positions at grades GS-5 through 11 on the staff of the Bureau.

(h) Bureau of Administration.

(1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM-1001-15.

(3) Up to 250 time-limited positions within the Department of State in support of the June 2004 Economic Summit of Industrial Nations. No new appointments may be made under this authority after June 30, 2004.

*Section 213.3105 Department of the Treasury*

(a) Office of the Secretary.

(1) Not to exceed 20 positions at the equivalent of GS-13 through GS-17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 50 positions in the Office of the Under Secretary (Enforcement).

(b) U.S. Customs Service.

(1) Positions in foreign countries designated as "interpreter-translator"

and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)-(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) Office of Thrift Supervision.

(1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) Internal Revenue Service.

(1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) Bureau of Alcohol, Tobacco, and Firearms.

(1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

*Section 213.3106 Department of Defense*

(a) Office of the Secretary.

(1)-(5) (Reserved).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).

(1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents

of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided, that

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS-12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) Positions engaged in the reconstruction of Iraq for hiring non-U.S. citizens when there is a severe shortage of candidates with U.S. citizenship. This authority is limited to appointments made on or before July 1, 2004, and is subject to any restrictions set forth in the Department of Defense FY 2002 Appropriations Act.

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after March 31, 2009.

(c) (Reserved).

(d) General.

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences.

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University.

(1) Not to exceed 16 positions of senior policy analyst, GS-15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency.

(1) Not to exceed 10 positions at grades GS-10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisitions University.

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany.

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii.

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

*Section 213.3107 Department of the Army*

(a)-(c) (Reserved).

(d) U.S. Military Academy, West Point, New York.

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)-(f) (Reserved).

(g) Defense Language Institute.

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA.

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

*Section 213.3108 Department of the Navy*

(a) General.

(1)-(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College.

(1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) Chief of Naval Operations.

(1) One position at grade GS-12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command.

(1) All positions on vessels operated by the Military Sealift Command.

(e) Pacific Missile Range Facility, Barking Sands, Hawaii.

(1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) Office of Naval Research.

(1) Scientific and technical positions, GS-13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

*Section 213.3109 Department of the Air Force*

(a) Office of the Secretary.

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General.

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred forty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS-11 through GS-15, in Detachments 6 and 51, SM-ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado.

(1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) Air Force Office of Special Investigations.

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS-5 through GS-15, in the Air Force Office of Special Investigations.

(g) Not to exceed eight positions, GS-12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama.

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.

(1) Civilian deans and professors.

(j) Air Force Logistics Command.

(1) One Supervisory Logistics Management Specialist, GM-346-14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS-346-15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

*Section 213.3110 Department of Justice*

(a) General.

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS-15 and below on the staff of an office of a special counsel.

(3)-(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in one-year increments for the duration of the in-country program.

(b) Immigration and Naturalization Service.

(1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS-1040-5/9.

(3) Not to exceed 25 positions, GS-15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) Drug Enforcement Administration.

(1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS-132 series, grades GS-9 through GS-15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS-7/11.

(d) National Drug Intelligence Center. All positions.

*Section 213.3111 Department of Homeland Security*

(a) Up to 50 positions at the GS-5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after September 30, 2005.

(b)(1) Ten positions for over site policy and direction of sensitive law enforcement activities.

*Section 213.3112 Department of the Interior*

(a) General.

(1) Technical, maintenance, and clerical positions at or below grades GS-7, WG-10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS-7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS-7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) Indian Arts and Crafts Board. (1) The Executive Director.

(d) (Reserved).

(e) Office of the Assistant Secretary, Territorial and International Affairs.

(1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS-5, GS-7, or GS-9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service.

(1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95-565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95-250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation.

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under

this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs.

(1) Positions of Territorial Management Interns, GS-5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

*Section 213.3113 Department of Agriculture*

(a) General.

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)-(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS-7 and WG-10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6)-(7) (Reserved).

(b)-(c) (Reserved).

(d) Farm Service Agency.

(1) (Reserved).

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development.

(1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)-(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service.

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS-9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS-11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS-5 and below; Clerk-Typists at grades GS-4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS-11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS-5 and below; Clerk-Typists at grades GS-4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL-2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG-10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton

Agricultural Commodity Graders, GS-5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)-(k) (Reserved).

(l) Food Safety and Inspection Service.

(1)-(2) (Reserved).

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS-11 and below and non-Veterinarians at appropriate grades below GS-11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration.

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS-2/4; 100 positions of Agricultural Commodity Technician (Grain), GS-4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS-5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation. (1) Executive Director.

#### *Section 213.3114 Department of Commerce*

(a) General.

(1)-(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)-(c) (Reserved).

(d) Bureau of the Census.

(1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)-(h) (Reserved).

(i) Office of the Under Secretary for International Trade.

(1) Fifteen positions at GS-12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this

authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS-12 through GS-15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) National Oceanic and Atmospheric Administration.

(1)-(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) National Telecommunication and Information Administration.

(1) Seventeen professional positions in grades GS-13 through GS-15.

#### *Section 213.3115 Department of Labor*

(a) Office of the Secretary.

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)-(c) (Reserved).

(d) Employment and Training Administration.

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS-7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

#### *Section 213.3116 Department of Health and Human Services*

(a) General.

(1) Intermittent positions, at GS-15 and below and WG-10 and below, on

teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service.

(1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)-(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)-(14) (Reserved).

(15) Not to exceed 200 staff positions, GS-15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)-(e) (Reserved).

(f) The President's Council on Physical Fitness.

(1) Four staff assistants.

#### *Section 213.3117 Department of Education*

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

*Section 213.3124 Board of Governors, Federal Reserve System*

(a) All positions.

*Section 213.3127 Department of Veterans Affairs*

(a) Construction Division.

(1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS-3 through GS-11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals.

(1) Positions, GS-15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100-687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS-15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS-3 through GS-11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

*Section 213.3128 Broadcasting Board of Governors*

(a) International Broadcasting Bureau.

(1) Not to exceed 200 positions at grades GS-15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

*Section 213.3132 Small Business Administration*

(a) When the President under 42 U.S.C. 1855-1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855-1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the

Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

*Section 213.3133 Federal Deposit Insurance Corporation*

(a)-(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

*Section 213.3136 U.S. Soldiers' and Airmen's Home*

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

*Section 213.3146 Selective Service System*

(a) State Directors.

*Section 213.3148 National Aeronautics and Space Administration*

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

*Section 213.3155 Social Security Administration*

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New

Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

*Section 213.3162 The President's Crime Prevention Council*

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

*Section 213.3165 Chemical Safety and Hazard Investigation Board*

(a) (Reserved).

(b) Seven positions of either Chemical Incident Investigators or Chemical Safety Recommendation Specialists, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after October 15, 2002, or until the seventh person (who was given an offer of employment on September 13, 2002, and is waiting a physical examination clearance) is appointed, whichever is later.

*Section 213.3166 Court Services and Offender Supervision Agency of the District of Columbia*

(a) All positions, except for the Director, established to create the Court Services and Offender Supervision Agency of the District of Columbia. No new appointments may be made under this authority after March 31, 2004.

*Section 213.3174 Smithsonian Institution*

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS-15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

*Section 213.3175 Woodrow Wilson International Center for Scholars*

(a) One Asian Studies Program Administrator, one International Security Studies Program

Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, two Social Science Program Administrators, and one Middle East Studies Program Administrator.

*Section 213.3178 Community Development Financial Institutions Fund*

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

*Section 213.3180 Utah Reclamation and Conservation Commission*

(a) Executive Director.

*Section 213.3182 National Foundation on the Arts and the Humanities*

(a) National Endowment for the Arts.

(1) Artistic and related positions at grades GS-13 through GS-15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

*Section 213.3190 African Development Foundation*

(a) One Enterprise Development Fund Manager. Appointment authority is limited to four years unless extended by the Office of Personnel Management.

*Section 213.3191 Office of Personnel Management*

(a)-(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS-8 and below.

*Section 213.3194 Department of Transportation*

(a) U.S. Coast Guard.

(1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess,

and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)-(d) (Reserved).

(e) Maritime Administration.

(1)-(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)-(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

*Section 213.3195 Federal Emergency Management Agency*

(a) Field positions at grades GS-15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93-288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS-15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93-288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may

be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS-5 through GS-15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

*Section 213.3199 Temporary Organizations*

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

**Schedule B**

*Section 213.3202 Entire Executive Civil Service*

(a) Student Educational Employment Program—Student Temporary Employment Program.

(1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

- (i) High School Diploma or General Equivalency Diploma (GED);
- (ii) Vocational/Technical certificate;
- (iii) Associate degree;
- (iv) Baccalaureate degree;
- (v) Graduate degree; or
- (vi) Professional degree

\* \* \* \* \* [The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) Student Educational Employment Program—Student Career Experience Program.

(1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

- (A) High school diploma or General Equivalency Diploma (GED);
- (B) Vocational/Technical certificate;
- (C) Associate degree;
- (D) Baccalaureate degree;
- (E) Graduate degree; or
- (F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93-842 are eligible for appointments under the Student Career Experience Program.

\* \* \* \* \* [The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

(c)-(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k)–(l) (Reserved).

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

(o) The Federal Career Intern Program—

(1) Appointments. Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) Extensions.

(i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

\* \* \* \* \* [The remaining text of provisions pertaining to the Federal Career Intern Program can be found in 5 CFR 213.3202(o).]

*Section 213.3203 Executive Office of the President*

(a) (Reserved).

(b) Office of the Special Representative for Trade Negotiations.

(1) Seventeen positions of economist at grades GS–12 through GS–15.

*Section 213.3204 Department of State*

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

*Section 213.3205 Department of the Treasury*

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) A total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement

Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

*Section 213.3206 Department of Defense*

(a) Office of the Secretary.

(1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities.

(1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University.

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General.

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General.

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama.

(1) One Director, GM–15.

(g) Defense Security Assistance Agency. All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

*Section 213.3207 Department of the Army*

(a) U.S. Army Command and General Staff College.

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

*Section 213.3208 Department of the Navy*

(a) Naval Underwater Systems Center, New London, Connecticut.

(1) One position of Oceanographer, grade GS-14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS-15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS-301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM-1173-14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

*Section 213.3209 Department of the Air Force*

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)-(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS-301-13, with the U.S. Air Force Academy, Colorado.

*Section 213.3210 Department of Justice*

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS-5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS-5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS-6 through GS-15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

*Section 213.3213 Department of Agriculture*

(a) Foreign Agricultural Service.

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General.

(1) Temporary positions of professional Research Scientists, GS-15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM-301-14/15, with

the State Rural Development Councils in support of the Presidential Rural Development Initiative.

*Section 213.3214 Department of Commerce*

(a) Bureau of the Census.

(1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS-5 through GS-12.

(3) (Reserved).

(b)-(c) (Reserved).

(d) National Telecommunications and Information Administration.

(1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS-11 through 15. Employment under this authority may not exceed 2 years.

*Section 213.3215 Department of Labor*

(a) Chair and a maximum of four additional Members, Administrative Review Board.

(b) (Reserved).

(c) Bureau of International Labor Affairs.

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

*Section 213.3217 Department of Education*

(a) Seventy-five positions, not to exceed GS-13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS-7 through GS-11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

*Section 213.3227 Department of Veterans Affairs*

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS-11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS-1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

*Section 213.3236 U.S. Soldiers' and Airmen's Home*

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

*Section 213.3240 National Archives and Records Administration*

(a) Executive Director, National Historical Publications and Records Commission.

*Section 213.3248 National Aeronautics and Space Administration*

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS-7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

*Section 213.3255 Social Security Administration*

(a) Temporary and time-limited positions in the Ticket to Work and Work Incentives Advisory Panel. No employees may be appointed after November 17, 2007.

*Section 213.3274 Smithsonian Institution*

(a) (Reserved).

(b) Freer Gallery of Art.

(1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS-9 through GS-15.

*Section 213.3276 Appalachian Regional Commission*

(a) Two Program Coordinators.

*Section 213.3278 Armed Forces Retirement Home*

(a) Naval Home, Gulfport, Mississippi.

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM-15 and below.

*Section 213.3282 National Foundation on the Arts and the Humanities*

(a) (Reserved).

(b) National Endowment for the Humanities.

(1) Professional positions at grades GS-11 through GS-15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

*Section 213.3291 Office of Personnel Management*

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS-13 and GS-14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS-13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

**Schedule C***Section 213.3303 Executive Office of the President*

## Council of Economic Advisers

CEGS60001 Confidential Assistant to the Chairman, Council of Economic Advisers

CEGS60004 Confidential Assistant to the Chairman, Council of Economic Advisers

CEGS60005 Administrative Operations Assistant to the Member (Council for Economic Advisers)

## Council on Environmental Quality

EQGS00011 Associate Director for Global Environmental Affairs to the Chairman (Council on Environmental Quality)

## Office of Management and Budget

BOGS00022 Confidential Assistant to the Executive Associate Director

BOGS00039 Legislative Analyst to the Associate Director for Legislative Affairs

BOGS00085 Special Assistant to the Administrator to the Administrator, E-Government and Information Technology

BOGS00151 Deputy Press Secretary to the Associate Director, Strategic Planning and Communications

BOGS00153 Special Assistant to the Director Office of Management and Budget

BOGS00160 Press Secretary to the Associate Director, Strategic Planning and Communications

BOGS60010 Counselor to the Controller to the Controller, Office of Federal Financial Management

BOGS60015 Communications Writer to the Associate Director for Strategic Planning and Communications

BOGS60020 Special Assistant to the Administrator Office of Federal Procurement Policy

BOGS60025 Confidential Assistant to the Deputy Director for Management to the Deputy Director for Management

BOGS60026 Confidential Assistant to the Associate Director for General Government Programs

BOGS60027 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs

BOGS60030 Confidential Assistant to the Deputy Director Office of Management and Budget

BOGS60031 Confidential Assistant to the Deputy Director Office of Management and Budget

BOGS60034 Confidential Assistant to the Controller, Office of Federal Financial Management

BOGS60141 Deputy to the Associate Director for Legislative Affairs (Senate) to the Executive Associate Director

BOGS60143 Deputy to the Associate Director for Legislative Affairs (House) to the Executive Associate Director

BOGS60148 Confidential Assistant to the Associate Director for National Security and International Affairs

## Office of National Drug Control Policy

QQGS00013 Project Coordinator to the Chief of Staff

QQGS00015 Associate Deputy Director, State and Local Affairs to the Deputy Director for State and Local Affairs

QQGS00018 Administrative Specialist to Associate Director to the Associate Director, Public Affairs

QQGS00028 White House Liaison and Intergovernmental Affairs Specialist to the Chief of Staff

QQGS00029 Legislative Staff Assistant (Office Automation) to the Associate Director, Legislative Affairs

QQGS00030 Public Affairs Assistant to the Associate Director, Public Affairs

QQGS00031 Legislative Analyst to the Associate Director, Legislative Affairs

QQGS00032 Program Assistant (Office Automation) to the Project Coordinator

QQGS00034 Policy Analyst to the Associate Deputy Director, State and Local Affairs  
 QQGS00036 Public Affairs Specialist to the Associate Director, Public Affairs  
 QQGS00037 Public Affairs Specialist (Press Secretary) to the Associate Director, Public Affairs  
 QQGS00040 Legislative Analyst to the Associate Director, Legislative Affairs  
 QQGS00084 Public Affairs Specialist (Events Coordinator) to the Press Secretary (Assistant Director)  
 QQGS00085 Special Assistant to the Deputy Director for Demand Reduction to the Director  
 QQGS60001 Special Assistant to the Director to the Director  
 QQGS60006 Special Assistant to the Director  
 QQGS60007 Special Assistant to the Director  
 Office of the United States Trade Representative  
 TNGS00016 Public Affairs Specialist to the Chief of Staff  
 TNGS00017 Director of Chief Operations to the United States Trade Representative  
 TNGS00071 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Chief of Staff  
 TNGS60019 Special Textile Negotiator to the United States Trade Representative  
 Official Residence of the Vice President  
 RVGS00004 Deputy Social Secretary to the Assistant to the Vice President and Deputy Chief of Staff  
 Office of Science and Technology Policy  
 TSGS60005 Executive Assistant for Policy and Intergovernmental Affairs to the Associate Director, Science  
 TSGS60006 Assistant Associate Director for Telecommunications and Information Technology to the Associate Director, Science  
 TSGS60032 Assistant to the Director for Legislative Affairs to the Chief of Staff and General Counsel  
 TSGS60033 Confidential Assistant to the Director and the Chief of Staff to the Chief of Staff and General Counsel  
 TSGS60035 Confidential Assistant to the Associate Director for Science to the Associate Director, Science  
 TSGS60036 Confidential Assistant to the Associate Director for Technology to the Associate Director, Technology  
 Section 213.3304 Department of State  
 DSGS00425 Foreign Affairs Officer to the Assistant Secretary Bureau of Political-Military Affairs  
 DSGS60119 Special Advisor to the Assistant Secretary for East Asian and Pacific Affairs  
 DSGS60152 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs  
 DSGS60156 Confidential Assistant to the Secretary of State  
 DSGS60161 Staff Assistant to the Ambassador-At-Large (War Crimes)  
 DSGS60166 Attorney Advisor to the Deputy Assistant Secretary for Equal Employment Opportunity  
 DSGS60194 Senior Advisor to the Under Secretary for Arms Control and Security Affairs  
 DSGS60201 Staff Assistant to the Under Secretary for Global Affairs  
 DSGS60267 Foreign Affairs Officer to the Principal Deputy Assistant Secretary  
 DSGS60370 Program Officer to the Principal Deputy Assistant Secretary  
 DSGS60389 Senior Advisor to the Assistant Secretary  
 DSGS60394 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs  
 DSGS60395 Director, Art in Embassies Program to the Deputy Assistant Secretary  
 DSGS60410 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs  
 DSGS60417 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs  
 DSGS60420 Special Assistant to the Assistant Secretary  
 DSGS60430 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs  
 DSGS60434 Special Assistant to the Senior Advisor to the Secretary and White House Liaison  
 DSGS60439 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs  
 DSGS60445 Special Advisor to the Assistant Secretary for Democracy Human Rights and Labor  
 DSGS60450 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs  
 DSGS60454 Member, Policy Planning Staff to the Director, Policy Planning Staff  
 DSGS60486 Foreign Affairs Officer to the Assistant Secretary for Democracy Human Rights and Labor  
 DSGS60499 Senior Advisor to the Assistant Secretary  
 DSGS60500 Foreign Affairs Officer to the Assistant Secretary for European Affairs  
 DSGS60505 Resource, Plans and Policy Advisor to the Chief Financial Officer  
 DSGS60506 Special Assistant to the Assistant Secretary for Public Affairs  
 DSGS60508 Special Assistant to the Under Secretary for Arms Control and Security Affairs  
 DSGS60512 Special Assistant to the Under Secretary for Economic Business and Agricultural Affairs  
 DSGS60520 Director, Office of Public Liaison to the Assistant Secretary for Public Affairs  
 DSGS60552 Public Affairs Specialist to the Assistant Secretary for Public Affairs  
 DSGS60567 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs  
 DSGS60707 Executive Director to the Under Secretary for Arms Control and Security Affairs  
 DSGS60711 Staff Assistant to the Deputy Ambassador-At-Large for War Crimes  
 DSGS60712 Special Advisor to the Assistant Legal Adviser for African Affairs  
 DSGS60715 Special Assistant to the Under Secretary for Arms Control and Security Affairs  
 DSGS60719 Senior Advisor to the Comptroller  
 DSGS60723 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs  
 DSGS60724 Special Assistant to the Director Office Resource Management Operations  
 DSGS60725 Press Officer to the Assistant Secretary for Public Affairs  
 DSGS60734 Public Affairs Specialist to the Assistant Secretary for Public Affairs  
 DSGS60736 Staff Assistant to the Assistant Secretary, Bureau of Resource Management  
 DSGS60737 Special Assistant to the Legal Adviser  
 DSGS60741 Special Assistant to the Under Secretary for Arms Control and Security Affairs  
 DSGS60744 Special Assistant to the Under Secretary for Arms Control and Security Affairs  
 DSGS60745 Special Assistant to the Assistant Secretary, Bureau of Arms Controls  
 DSGS60749 Special Assistant to the Deputy Assistant Secretary, Bureau for Education and Cultural Affairs  
 DSGS60750 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs  
 DSGS60751 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs

- DSGS60752 Special Assistant to the Under Secretary for Arms Control and Security Affairs
- DSGS60755 Special Assistant to the Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs
- DSGS60757 Foreign Affairs Officer to the Assistant Secretary, Bureau of Arms Control
- DSGS60758 Special Assistant to the Under Secretary for Arms Control and Security Affairs
- DSGS60759 Staff Assistant to the Director, Foreign Policy Planning Plan
- DSGS60761 Special Advisor to the Assistant Secretary for International Organizational Affairs
- DSGS60762 Special Assistant to the Assistant Secretary for Public Affairs
- DSGS60763 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
- DSGS60764 Foreign Affairs Officer to the Assistant Secretary for East Asian and Pacific Affairs
- DSGS60765 Public Affairs Specialist to the Assistant Secretary for Public Affairs
- DSGS60767 Special Assistant to the Assistant Secretary Bureau of Political-Military Affairs
- DSGS60768 Special Assistant to the Assistant Secretary for Economic and Business Affairs
- DSGS60769 Special Assistant to the Under Secretary for Management
- DSGS60770 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
- DSGS60771 Coordinator for Intergovernmental Affairs to the Assistant Secretary for Public Affairs
- DSGS60772 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
- DSGS60773 Special Assistant to the Assistant Secretary, Bureau of Verification and Compliance
- DSGS60774 Special Assistant to the Coordinator
- DSGS60776 Special Assistant to the Coordinator
- DSGS60777 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
- DSGS60778 Foreign Affairs Officer to the Assistant Secretary for Near Eastern and South Asian Affairs
- DSGS60781 Public Affairs Specialist to the Assistant Secretary for Public Affairs
- DSGS60782 Special Assistant to the Assistant Secretary for Western Affairs to the Assistant Secretary for African Affairs
- DSGS60784 Protocol Assistant to the Chief of Protocol
- DSGS60785 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
- DSGS60786 Senior Advisor to the Coordinator
- DSGS60787 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
- DSGS60789 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs
- DSGS60790 Special Assistant to the Assistant Secretary, Economic and Agricultural Affairs
- DSGS60793 Chief, Voluntary Visitors Division to the Assistant Secretary, Bureau for Education and Cultural Affairs
- DSGS60794 Special Assistant to the Assistant Secretary for Public Affairs
- DSGS60795 Member, Policy Planning Staff to the Director, Policy Planning Staff
- DSGS60796 Program Analyst to the Assistant Secretary, Bureau of Education Cultural Affairs
- DSGS60798 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60799 Foreign Affairs Officer to the Under Secretary for Global Affairs
- DSGS60801 Senior Advisor to the Assistant Secretary for Democracy Human Rights and Labor
- DSGS60802 Writer-Editor to the Assistant Secretary Oceans, International Environment and Science Affairs
- DSGS60803 Public Affairs Specialist to the Office Director, Office to Monitor and Combat Trafficking In Persons
- DSGS60804 Staff Assistant to the Deputy Assistant Secretary for Equal Employ Opportunity
- DSGS60806 Protocol Officer (Visits) to the Supervisory Protocol Officer (Visits)
- DSGS60808 Protocol Officer to the Deputy Chief of Protocol
- DSGS60809 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60810 Staff Assistant to the Secretary of State
- DSGS60812 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison
- DSGS60815 Special Assistant to the Deputy Secretary
- DSGS60816 Special Assistant to the Deputy Secretary
- DSGS60817 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60820 Public Affairs Specialist to the Assistant Secretary for Public Affairs
- DSGS60821 Staff Assistant to the Deputy Secretary
- DSGS60943 Special Assistant to the Assistant Secretary for Public Affairs
- DSGS60944 Protocol Assistant (Gifts) to the Chief of Protocol
- DSGS60945 Foreign Affairs Officer (Visits) to the Chief of Protocol
- DSGS60948 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60950 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
- DSGS60951 Congressional Affairs Manager to the Assistant Secretary for International Organizational Affairs
- DSGS60952 Public Affairs Specialist to the HIV/AIDS Coordinator
- DSGS60953 Foreign Affairs Officer to the Deputy Assistant Secretary
- DSGS60954 Special Assistant to the Chief of Protocol
- DSGS60957 Supervisory Protocol Officer (Visits) to the Deputy Chief of Protocol
- DSGS60958 Staff Assistant to the Chief Financial Officer
- DSGS60959 Staff Assistant to the Deputy Secretary
- DSGS60960 Senior Advisor to the Assistant Secretary for International Organizational Affairs
- DSGS60961 Public Affairs Specialist to the Assistant Secretary for Public Affairs
- DSGS60962 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60963 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60964 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
- DSGS60965 Foreign Affairs Officer to the Deputy Assistant Secretary
- DSGS60966 Staff Assistant to the Assistant Secretary for Public Affairs
- DSGS60968 Special Assistant to the Assistant Secretary for Public Affairs
- DSGS60970 Special Assistant to the Assistant Secretary for Public Affairs
- DSGS60971 Public Affairs Specialist to the Assistant Secretary for Public Affairs
- Section 213.3305 Department of the Treasury*
- DYGS00250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs)

- DYGS00321 Financial Analyst to the Director, Office of Specialized Development Institutions
- DYGS00328 Deputy Assistant Secretary (Policy Coordination) to the Assistant Secretary (Economic Policy)
- DYGS00356 Director, Critical Infrastructure Protection and Compliance Policy to the Deputy Assistant Secretary (Critical Infrastructure Protection and Compliance Policy)
- DYGS00375 Director of Legislative and Governmental Affairs to the Director of the Mint
- DYGS00377 Special Assistant to the White House Liaison
- DYGS00380 Deputy to the Assistant Secretary (Legislative Affairs) to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
- DYGS00400 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer
- DYGS00420 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
- DYGS00423 Special Assistant to the Secretary.
- DYGS00425 Special Assistant to the Assistant Secretary (Deputy Under Secretary) International Affairs
- DYGS00429 Executive Assistant to the Secretary
- DYGS00433 Director of Public and Legislative Affairs to the Director Community Development Financial Institutions
- DYGS00434 Special Assistant to the Deputy Chief of Staff
- DYGS00436 Public Affairs Specialist to the Deputy Assistant Secretary (Public Affairs)
- DYGS00437 Special Assistant to the Deputy Assistant Secretary and Chief Human Capital Officer
- DYGS00439 Executive Secretary to the Chief of Staff
- DYGS00440 Public Affairs Specialist to the Director, Public Affairs
- DYGS00441 Director of Outreach to the Deputy Assistant Secretary
- DYGS00442 Special Assistant to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development)
- DYGS00443 Special Assistant to the Assistant Secretary, Terrorist Financing
- DYGS00444 Special Assistant to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development)
- DYGS00445 Senior Advisor to the Secretary (Scheduling) to the Chief of Staff
- DYGS00446 Senior Advisor to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
- DYGS00447 Special Advisor to the Under Secretary for Enforcement
- DYGS00448 Special Assistant to the Deputy Assistant Secretary
- DYGS00450 Special Assistant to the Director, Public Affairs
- DYGS00451 Policy Analyst to the Assistant Secretary—Terrorist Financing
- DYGS00452 Special Assistant to the Director, Public Affairs
- DYGS00453 Staff Assistant to the Assistant Secretary (Public Affairs)
- DYGS00454 Director, Travel Operations to the Assistant Secretary (Management) and Chief Financial Officer
- DYGS00456 Special Assistant to the Deputy General Counsel
- DYGS00457 Senior Advisor to the Chief of Staff
- DYGS00458 Special Assistant to the Treasurer to the Treasurer of the United States
- DYGS60230 Public Affairs Specialist to the Director, Public Affairs
- DYGS60250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs)
- DYGS60277 Senior Writer to the Assistant Secretary (Public Affairs)
- DYGS60362 Special Assistant to the Assistant Secretary (Financial Institutions)
- DYGS60381 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
- DYGS60390 Senior Advisor to the Assistant Secretary (Management) and Chief Financial Officer
- DYGS60396 Senior Advisor to the Deputy Assistant Secretary (Public Liaison) to the Deputy Assistant Secretary (Public Liaison)
- DYGS60405 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
- DYGS60407 Senior Advisor to the Assistant Secretary for Financial Markets
- DYGS60417 Senior Advisor to the Deputy Assistant Secretary (Government Financial Policy)
- DYGS60418 Special Assistant to the Executive Secretary
- DYGS60421 Special Assistant to the Deputy Assistant Secretary for Legislative Affairs
- DYGS61059 Tax Legislative Advisor to the Assistant Secretary (Tax Policy)
- Section 213.3306 Office of the Secretary of Defense*
- DDGS00673 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)
- DDGS00682 Staff Assistant to the Deputy Assistant Secretary of Defense (Asia and Pacific)
- DDGS00708 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
- DDGS00714 Special Assistant to the Under Secretary of Defense (Policy) to the Under Secretary of Defense for Policy
- DDGS00749 Staff Assistant to the Assistant Secretary of Defense (International Security Affairs)
- DDGS00770 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
- DDGS00771 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
- DDGS00779 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
- DDGS00788 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
- DDGS16514 Personal and Confidential Assistant to the Secretary of Defense
- DDGS16561 Special Assistant to the Director of Defense Research and Engineering
- DDGS16649 Special Assistant to the Assistant Deputy Comptroller (Program/Budget)
- DDGS16660 Director of Assessments to the Deputy Under Secretary of Defense (International Technology Security)
- DDGS16667 Public Affairs Specialist to the Deputy Assistant Secretary of Defense for Public Affairs (Communications)
- DDGS16668 Special Assistant to the Assistant Secretary of Defense (Public Affairs) to DDGS16675 Personal and Confidential Assistant to the Assistant Secretary of Defense (Reserve Affairs)
- DDGS16692 Confidential Assistant to the Secretary of Defense
- DDGS16694 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
- DDGS16709 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
- DDGS16718 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
- DDGS16737 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
- DDGS16740 Confidential Assistant to the Secretary of Defense
- DDGS16758 Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison
- DDGS16774 Speechwriter to the Special Advisor to the Deputy

- Secretary of Defense for Communications Strategy  
DDGS16777 Defense Fellow to the Director of Administration and Management/Director of Washington Headquarters Service  
DDGS16778 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)  
DDGS16780 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)  
DDGS16783 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)  
DDGS16787 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16791 Public Affairs Specialist to the Public Affairs Specialist  
DDGS16796 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)  
DDGS16797 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)  
DDGS16800 Researcher Assistant to the Special Assistant for Speechwriting  
DDGS16801 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16802 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security)  
DDGS16803 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)  
DDGS16806 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16807 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16808 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs  
DDGS16809 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics)  
DDGS16810 Confidential Assistant to the Deputy Under Secretary of Defense (Personnel and Readiness)  
DDGS16811 Special Assistant to the Director, Small and Disadvantaged Business Utilities  
DDGS16812 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)  
DDGS16813 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)  
DDGS16814 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)  
DDGS16816 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16817 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)  
DDGS16818 Special Assistant to the Deputy Assistant Secretary of Defense (Military Community and Family Policy)  
DDGS16821 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs  
DDGS16823 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)  
DDGS16825 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy)  
DDGS16828 Protocol Officer to the Special Assistant to the Secretary of Defense for Protocol  
DDGS16829 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16830 Personal and Confidential Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict)  
DDGS16831 Research Assistant to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)  
DDGS16832 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)  
DDGS16834 Staff Assistant to the Principal Deputy Under Secretary of Defense for Policy  
DDGS16836 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16837 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16839 Supervisory Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Internal Communications)  
DDGS16842 Staff Assistant to the Deputy Assistant Secretary Defense (Special Operations and Combating Terrorism)  
DDGS16844 Special Assistant to the Under Secretary of Defense (Comptroller) and Principal Deputy Under Secretary of Defense (Management Reform)  
DDGS16848 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16849 Program Support Specialist to the Deputy Assistant Secretary of Defense (Internal Communications)  
DDGS16851 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller)  
DDGS16852 Special Assistant to the Under Secretary of Defense (Comptroller)  
DDGS16853 Research Assistant to the Speechwriter  
DDGS16854 Defense Fellow to the Special Assistant to the Secretary of Defense for Protocol  
DDGS16856 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16860 Speechwriter to the Speechwriter  
DDGS16861 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16862 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16863 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16864 Executive Assistant to the President's Physician to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16865 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16866 Staff Assistant to the Assistant Secretary of Defense (Health Affairs)  
DDGS16867 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16868 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16869 Staff Assistant to the Executive Director Employer Support of the Guard and Reserve  
DDGS16871 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16872 Special Assistant to the Assistant Secretary of Defense (International Secretary Policy)  
DDGS16876 Staff Assistant to the Deputy Assistant Secretary of Defense (Detainee Affairs)  
DDGS16878 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS16879 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS60033 Personal Secretary to the Deputy Secretary of Defense  
DDGS60273 Civilian Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS60274 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison  
DDGS60305 Personal and Confidential Assistant to the Under Secretary of Defense (Personnel and Readiness)  
DDGS60312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (International Secretary Policy)  
DDGS60314 Coordinator of Reserve Integration to the Principal Deputy

- Assistant Secretary of Defense (Reserve Affairs)  
 DDGS60319 Confidential Assistant to the Deputy Secretary of Defense  
 DDGS60333 Speechwriter to the Special Assistant for Speechwriting  
 DDGS60368 Personal and Confidential Assistant to the Assistant Secretary of Defense (Legislative Affairs)  
 DDGS60369 Executive Assistant to the Director of Force Transformation  
 DDGS60454 Special Assistant to the Director of Net Assessment  
 DDGS60471 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)  
 DDGS60475 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)  
 DDGS60520 Special Assistant to the Deputy Assistant Secretary of Defense (Prisoners of War/Military Police)/ Director, Prisoners of War Missing Persons Office  
 DDGS60611 Personal and Confidential Assistant to the Secretary of Defense  
 DDGS60680 Confidential Assistant to the Deputy Secretary of Defense  
 DDGS60686 Personal and Confidential Assistant to the General Counsel
- Section 213.3307 Department of the Army*
- DWGS00077 Confidential Assistant to the Assistant Secretary of the Army (Civil Works)  
 DWGS00078 Special Assistant to Deputy Assistant Secretary of the Army for Privatization and Partnerships  
 DWGS00079 Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs)/Deputy Assistant Secretary (Training, Readiness and Mobilization)  
 DWGS00081 Assistant for Water Resources Policy to the Deputy Assistant Secretary of the Army (Legislation)  
 DWGS00083 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Acquisition, Logistics and Technology) and Director for Iraq Reconstruction and Program Management  
 DWGS60002 Special Assistant to the Secretary of the Army  
 DWGS60008 Special Assistant to the Assistant Secretary of the Army (Installations, Logistics and Environment)  
 DWGS60010 Special Assistant to the Army General Counsel  
 DWGS60014 Confidential Assistant to the General Counsel  
 DWGS60017 Special Assistant to the Army General Counsel
- DWGS60053 Personal & Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller)/(Controls)  
 DWGS60076 Special Assistant to the Assistant Secretary of the Army (Civil Works)
- Section 213.3308 Department of the Navy*
- DNGS00064 Confidential Assistant to the Assistant Secretary of Navy (Installations and Environment)  
 DNGS00070 Confidential Assistant to the Assistant Secretary of the Navy (Research Development and Acquisition)  
 DNGS60066 Staff Assistant to the Secretary of the Navy  
 DNGS60069 Staff Assistant to the Under Secretary of the Navy  
 DNGS60071 Residence Manager and Social Secretary to the Vice President to the Secretary of the Navy
- Section 213.3309 Department of the Air Force*
- DNGS60074 Confidential Staff Assistant to the Deputy Assistant Secretary of the Navy (Financial Management and Comptroller)  
 DFGS60007 Confidential Assistant to the Assistant Secretary (Financial Management and Comptroller)  
 DFGS60011 Personal and Confidential Assistant to the General Counsel  
 DFGS60012 Personal and Confidential Assistant to the General Counsel  
 DFGS60042 Special Assistant for Community Relations to the Director of Communication  
 DFGS60045 Budget Analyst to the Assistant Secretary (Financial Management and Comptroller)
- Section 213.3310 Department of Justice*
- DJGS00019 Special Assistant to the Chairman  
 DJGS00020 Director, Office of Police Corps and Law Enforcement Education to the Assistant Attorney General for Justice Programs  
 DJGS00022 Research Assistant to the Director, Office of Public Affairs  
 DJGS00028 Director of Congressional Affairs to the Administrator, Drug Enforcement Administration  
 DJGS00031 Special Assistant to the Assistant Attorney General, Criminal Division  
 DJGS00034 Special Assistant to the Assistant Attorney General, Criminal Division  
 DJGS00035 Counsel (Senior Attorney) to the Administrator, Drug Enforcement Administration
- DJGS00045 Deputy Director, Office for Victims of Crime to the Director Office for Victims of Crime  
 DJGS00048 Congressional Liaison Specialist to the Administrator, Drug Enforcement Administration  
 DJGS00049 Special Assistant to the Administrator of Juvenile Justice and Delinquency Prevention  
 DJGS00052 Chief of Staff to the Director, National Institute of Justice  
 DJGS00053 Special Assistant to the Director, Alcohol, Tobacco, Firearms, and Explosives  
 DJGS00055 Chief of Staff to the Assistant Attorney General (Legal Policy)  
 DJGS00058 Chief of Staff to the Assistant Attorney General for Justice Programs  
 DJGS00063 Project Safe Neighborhoods Coordinator to the Deputy Attorney General  
 DJGS00076 Public Affairs Specialist to the United States Attorney, Western District, Texas  
 DJGS00077 Secretary to the United States Attorney, Western District, Arkansas  
 DJGS00085 Speech Writer to the Director, Office of Public Affairs  
 DJGS00112 Assistant to the Attorney General  
 DJGS00117 Deputy Director, Office of Faith-Based and Community Initiatives to the Director, Office of Faith-Based and Community Initiatives  
 DJGS00123 Senior Counsel to the Director, Office of Public Affairs  
 DJGS00130 Counsel to the Assistant Attorney General  
 DJGS00138 Special Assistant to the Assistant Attorney General, Tax Division  
 DJGS00145 Executive Assistant to the Solicitor General to the Solicitor General  
 DJGS00151 Special Assistant to the Administrator, Drug Enforcement Administration  
 DJGS00154 Speechwriter to the Director, Office of Public Affairs  
 DJGS00163 Special Assistant to the Assistant Attorney General  
 DJGS00164 Counsel to the Assistant Attorney General  
 DJGS00166 Counselor to the Attorney General  
 DJGS00176 Public Affairs Specialist to the Director, Office of Public Affairs  
 DJGS00180 Staff Assistant to the Assistant Attorney General (Legal Policy)  
 DJGS00184 Special Assistant to the Deputy Attorney General  
 DJGS00189 Counsel to the Assistant Attorney General, Civil Division

- DJGS00194 Senior Counsel to the Assistant Attorney General (Legal Policy)
- DJGS00199 Special Counsel to the Assistant Attorney General, Criminal Division
- DJGS00206 Counsel to the Director of the Violence Against Women Office
- DJGS00208 Confidential Assistant to the Director, Office of Public Affairs
- DJGS00213 Special Assistant to the Director, National Institute of Justice
- DJGS00214 Special Assistant to the Director of the Bureau of Justice Assistance
- DJGS00218 Special Assistant to the Assistant Attorney General for Justice Programs
- DJGS00225 Special Assistant to the Director of the Violence Against Women Office
- DJGS00235 Senior Advisor to the Director, Office of Public Affairs
- DJGS00237 Press Assistant to the Director, Office of Public Affairs
- DJGS00250 Assistant to the Attorney General for Scheduling and Advance to the Director of Scheduling and Advance
- DJGS00258 Counsel to the Assistant Attorney General
- DJGS00263 Law Clerk to the Assistant Attorney General (Legal Policy)
- DJGS00265 Press Assistant to the Director, Office of Public Affairs
- DJGS00266 Press Assistant to the Director, Office of Public Affairs
- DJGS00268 Counsel to the Assistant Attorney General, Antitrust Division
- DJGS00280 Special Assistant to the Assistant Attorney General (Legal Policy)
- DJGS00302 Associate Director to the Director, Office of Intergovernmental and Public Liaison
- DJGS00304 Associate Director to the Director, Office of Intergovernmental and Public Liaison
- DJGS00306 Special Assistant to the Director, Office of Intergovernmental and Public Liaison
- DJGS00320 Deputy Chief of Staff to the Chief of Staff, Criminal Division
- DJGS00324 Special Assistant to the Assistant Attorney General (Legislative Affairs)
- DJGS00330 Special Assistant to the Director, Office of Intergovernmental and Public Liaison
- DJGS00332 Counsel to the Assistant Attorney General, Civil Rights Division
- DJGS00333 Special Assistant to the Assistant Attorney General, Civil Rights Division
- DJGS00335 Special Assistant to the Chief of Staff
- DJGS00342 White House Liaison to the Attorney General
- DJGS00362 Policy Advisor to the Assistant Attorney General for Justice Programs
- DJGS00366 Special Assistant to the Attorney General
- DJGS00369 Deputy White House Liaison to the Advisor to the Attorney General and White House Liaison
- DJGS00374 Staff Assistant to the Director, Office of Public Affairs
- DJGS00387 Deputy Director and Press Secretary to the Director, Office of Public Affairs
- DJGS00390 Counsel to the Assistant Attorney General (Legal Counsel)
- DJGS00391 Special Assistant to the Director, Executive Office for United States Attorneys
- DJGS00400 Public Affairs Specialist to the United States Attorney, Western District, Virginia
- DJGS00406 Public Affairs Specialist to the Director, Office of Public Affairs
- DJGS00413 Executive Assistant to the United States Attorney, Executive Office for the United States Attorneys
- DJGS00444 Associate Director to the Director, Office of Intergovernmental and Public Liaison
- DJGS00445 Special Assistant to the Director, Community Relations Service
- DJGS60014 Deputy Administrator to the Administrator Juvenile Justice Delinquency Prevention
- DJGS60015 Deputy Director to the Director, National Institute of Justice
- DJGS60023 Special Assistant for International Protocol to the Director, Office of International Affairs
- DJGS60038 Secretary (Office Automation) to the United States Attorney, Massachusetts
- DJGS60115 Special Assistant to the Director, Community Oriented Policing Services
- DJGS60172 Secretary (Office Automation) to the United States Attorney, Western District, Louisiana
- DJGS60173 Secretary (Office Automation) to the United States Attorney, Northern District, Oklahoma
- DJGS60174 Secretary (Office Automation) to the United States Attorney, Wyoming
- DJGS60245 Attorney Advisor (Special Assistant) to the Assistant Attorney General, Environment and Natural Resources
- DJGS60246 Counsel to the Assistant Attorney General, Environment and Natural Resources
- DJGS60256 Senior Counsel for Voting Reform to the Assistant Attorney General, Civil Rights Division
- DJGS60267 Counsel to the Assistant Attorney General, Civil Rights Division
- DJGS60277 Director of Scheduling and Advance to the Attorney General, Office of the Attorney General
- DJGS60418 Secretary (Office Automation) to the United States Attorney, Nebraska
- DJGS60420 Secretary (Office Automation) to the United States Attorney, Eastern District, Pennsylvania
- DJGS60423 Secretary (Office Automation) to the United States Attorney, New Mexico
- DJGS60427 Secretary (Office Automation) to the United States Attorney, New Hampshire
- DJGS60429 Secretary (Office Automation) to the United States Attorney, Eastern District, Arkansas
- DJGS60430 Secretary (Office Automation) to the United States Attorney, Kansas
- DJGS60436 Secretary (Office Automation) to the United States Attorney, Southern District, Alabama
- DJGS60437 Secretary (Office Automation) to the United States Attorney, Delaware
- DJGS60448 Secretary (Office Automation) to the United States Attorney, Western District, Oklahoma
- DJSL00290 Director, Alcohol, Tobacco, Firearms, and Explosives to the Attorney General
- Section 213.3311 Department of Homeland Security*
- DMGS00050 Director of Speechwriting to the Assistant Secretary for Public Affairs
- DMGS00051 Business Analyst to the Special Assistant, Assistant Secretary for the Private Sector
- DMGS00057 Director, Local Affairs to the Director, State and Local Affairs
- DMGS00066 Associate Executive Secretary (Internal Coordination) to the Executive Secretary
- DMGS00101 Director/Executive Secretariat, Private Sector Advisory Committee to the Special Assistant, Office of the Assistant Secretary for the Private Sector
- DMGS00109 Business Liaison to the Special Assistant, Office of the Assistant Secretary for the Private Sector
- DMGS00118 Special Assistant for Administration to the Chief of Staff
- DMGS00122 Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Affairs
- DMGS00126 Director of Communications for Bureau of Citizenship and Immigration Services to the Director of Internal Communications
- DMGS00128 Director of Legislative Affairs for Information Analysis and

- Infrastructure Protection to the Assistant Secretary for Legislative Affairs
- DMGS00130 Director of Special Projects to the Director of Internal Communications
- DMGS00137 Special Assistant to the Under Secretary for Information Analysis and Infrastructure Protection
- DMGS00141 Press Secretary to the Assistant Secretary for Public Affairs
- DMGS00143 Senior Advance Representative to the Chief of Staff
- DMGS00146 Policy Advisor to the Chief of Staff
- DMGS00151 Business Liaison to the Special Assistant, Office of the Assistant Secretary for the Private Sector
- DMGS00154 Legislative Policy Advisor to the Assistant Secretary for Border and Transportation Security Policy
- DMGS00156 Plans and Operations Integration Officer to the Special Assistant, Office of the Assistant Secretary
- DMGS00157 Business Liaison to the Special Assistant, Office of the Assistant Secretary for the Private Sector
- DMGS00161 Director of Legislative Affairs for Emergency Preparedness and Response to the Chief of Staff
- DMGS00166 Executive Assistant to the Director, State and Local Affairs
- DMGS00172 Counsel to the General Counsel
- DMGS00178 Legislative Assistant to the Assistant Secretary for Legislative Affairs
- DMGS00183 Director of Public Liaison to the Assistant Secretary for Public Affairs
- DMGS00186 Legislative Assistant to the Assistant Secretary for Legislative Affairs
- DMGS00187 Director of Legislative Affairs for Border and Transportation Security to the Assistant Secretary for Legislative Affairs
- DMGS00188 Director of Legislative Affairs for Secretarial Offices to the Assistant Secretary for Legislative Affairs
- DMGS00189 Assistant Director for Legislative Affairs for Emergency Preparedness and Response to the Chief of Staff
- DMGS00195 Policy Analyst to the Director, Office for Domestic Preparedness
- DMGS00196 Executive Assistant to the Under Secretary for Science and Technology
- DMGS00202 Director of Policy to the Chief of Staff
- DMGS00203 Public Liaison Officer to the Director of Public Liaison
- DMGS00205 Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets
- DMGS00206 Press Assistant to the Director of Internal Communications
- DMGS00209 Public Liaison Officer to the Director of Public Liaison
- DMGS00222 Director of Communications for Information Analysis and Infrastructure Protection to the Director of Internal Communications
- DMGS00224 Policy Assistant for Emergency Preparedness and Response/Federal Emergency Management Agency to the Chief of Staff
- DMGS00225 Press Secretary for Emergency Preparedness and Response/Federal Emergency Management Agency to the Chief of Staff
- DMGS00228 Director of Communications, Office of Domestic Preparedness to the Chief of Staff and Senior Policy Advisor
- DMGS00231 Director of Communications for Science and Technology to the Deputy Assistant Secretary for Public Affairs
- DMGS00232 Press Assistant to the Director of Internal Communications
- DMGS00235 Press Secretary for Bureau of Citizenship and Immigration to the Chief of Staff
- DMGS00238 Executive Assistant to the Director, Office of Systems Engineering and Acquisition
- DMGS00239 Director of Intergovernmental Affairs for Emergency Preparedness and Response to the Chief of Staff
- DMGS00241 Assistant Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Affairs
- DMGS00242 Confidential Assistant to the Director, Local Affairs
- DMGS00247 Senior Editor and Correspondence Analyst to the Executive Secretary
- DMGS00250 Public Outreach Specialist to the Director of Special Projects
- DMGS00253 Assistant Director of Legislative Affairs for Secretarial Offices to the Director of Legislative Affairs for Secretarial Offices
- DMGS00254 Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets
- DMGS00257 Director, Trade Relations to the Commissioner, Customs and Border Protection
- DMGS00258 Advance Representative to the Director of Scheduling and Advance
- DMGS00259 Counter Narcotics Liaison to the Counter Narcotics Officer
- DMGS00266 Director, Academe and Policy Research Senior Advisory Committee of the Homeland Security Advisory Council to the Executive Director, Homeland Security Advisory Council
- DMGS00267 Associate Executive Secretary for External Coordination to the Executive Secretary
- DMGS00268 Assistant Commissioner for Public Affairs to the Assistant Secretary for Public Affairs
- DMGS00269 Special Assistant to the Under Secretary for Science and Technology
- DMGS00271 Deputy Assistant Secretary for Border and Transportation Security Policy to the Assistant Secretary for Border and Transportation Security Policy
- DMGS00274 Writer-Editor to the Executive Secretary
- DMGS00278 Operations Officer to the Chief of Staff
- DMGS00280 Staff Assistant to the Chief of Staff
- DMGS00285 Policy Analyst to the Special Assistant, Office of the Assistant Secretary for Private Sector
- DMGS00288 Special Assistant to the Chief Financial Officer (CFO)
- DMGS00289 Program Analyst to the Special Assistant, Office of the Assistant Secretary for Private Sector
- DMGS00290 Executive Officer to the Ombudsman
- DMGS00291 Executive Assistant to the Special Assistant, Office of the Assistant Secretary for Private Sector
- DMGS00292 Legislative Assistant to the Assistant Secretary for Legislative Affairs
- DMGS00297 Assistant Director for Legislative Affairs for Border and Transportation Security to the Assistant Secretary for Legislative Affairs
- DMGS00300 Special Assistant to the Assistant Secretary for Plans, Programs and Budgets
- DMGS00302 Special Assistant to the Homeland Security Advisory Council to the Executive Director, Homeland Security Advisory Council
- DMGS00303 Business Liaison to the Special Assistant, Office of the Assistant Secretary for Private Liaison
- DMGS00304 Policy Analyst to the Director, Office of International Affairs
- DMGS00305 Special Assistant to the Assistant Secretary, Immigration and Customs Enforcement
- DMGS00307 Press Officer to the Assistant Commissioner for Public Affairs
- DMGS00308 Legislative Assistant to the Director of Legislative Affairs for Information Analysis and Infrastructure Protection

- DMGS00310 Correspondence Assistant to the Executive Secretary
- DMGS00311 Special Assistant to the Chief of Staff, United States Custom and Border Protection
- DMGS00313 Writer-Editor (Speechwriter) to the Director of Speechwriting
- DMGS00314 Director of Immigration Policy to the Assistant Secretary for Border and Transportation Security Policy
- DMGS00315 Confidential Assistant to the Secretary of the Department of Homeland Security
- DMGS00316 Confidential Assistant to the Chief of Staff and Senior Policy Advisor
- DMGS00317 Special Assistant to the Chief of Staff
- DMGS00318 Policy Coordinator to the Executive Secretary
- DMGS00319 Press Assistant to the Director of Communications, Office of Domestic Preparedness
- DMGS00320 Policy Analyst to the Privacy Officer
- DMGS00323 Staff Assistant to the Under Secretary for Management
- DMGS00324 Special Assistant to the Director, State and Local Affairs
- DMGS00325 Public Affairs Officer to the Deputy Assistant Secretary for Public Affairs
- DMGS00326 Special Assistant to the General Counsel
- DMGS00327 Director of Communications to the Chief of Staff
- DMGS00329 Senior Policy Advisor to the Deputy Assistant Secretary for Information Analysis (Operations)
- DMGS00330 Special Assistant to the Ombudsman
- DMGS00331 Special Assistant to the Chief of Staff
- DMGS00332 Press Assistant to the Director of Communications, Office of Domestic Preparedness
- DMGS00333 Staff Assistant to the Director, National Capital Region Coordination
- DMGS00334 Deputy Director of Communications to the Chief of Staff
- DMGS00335 Director of Scheduling and Advance to the Chief of Staff
- DMGS00337 Assistant Commissioner for Legislative Affairs to the Commissioner, Customs and Border Protection
- DMGS00338 Confidential Assistant to the Under Secretary for Information Analysis and Infrastructure Protection
- DMGS00339 Writer-Editor (Senior Speechwriter) to the Director of Speechwriting
- DMGS00340 Press Assistant to the Assistant Secretary for Public Affairs
- DMGS00342 White House Liaison to the Chief of Staff
- DMGS00343 Special Assistant for Border and Transportation Security Policy to the Deputy Assistant Secretary for Border and Transportation Security Policy
- DMGS00345 Staff Assistant to the White House Liaison
- DMGS00347 Executive Assistant to the Chief of Staff
- DMGS00349 Senior Advisor to the Deputy Assistant Secretary for Information Analysis (Operations)
- DMGS00350 Deputy Press Secretary to the Assistant Secretary for Public Affairs
- DMGS00351 Assistant Press Secretary to the Assistant Secretary for Public Affairs
- DMGS00352 Special Assistant to the Deputy Assistant Secretary for Information Analysis (Operations)
- DMGS00354 Special Assistant and Writer-Editor to the Executive Secretary
- DMGS00355 Confidential Assistant to the Deputy Chief of Staff
- DMGS00356 Special Assistant to the Chief of Staff
- DMGS00357 Trip Coordinator to the Chief of Staff
- DMGS00358 Assistant Press Secretary to the Assistant Secretary for Public Affairs
- DMGS00367 Writer-Editor (Speechwriter) to the Assistant Secretary for Public Affairs
- DMGS00368 Press Assistant to the Assistant Secretary for Public Affairs
- DMGS00370 Senior Communications Advisor to the Assistant Secretary for Public Affairs
- DMGS00373 Deputy White House Liaison to the White House Liaison
- DMOT00190 Director, Stakeholder and Industry Affairs to the Administrator, United States Fire Administration
- DMOT00224 Director of Legislative Affairs for Transportation Security Administration to the Administrator, Transportation Security Administration
- Section 213.3312 Department of the Interior*
- DIGS00545 Special Assistant (Communications Program Manager) to the Director National Park Service
- DIGS01001 Special Assistant for Scheduling and Advance to the Director of Scheduling and Advance
- DIGS01017 Hispanic Media Outreach Coordinator to the Director, Office of Communications
- DIGS01019 Confidential Assistant to the Senior Adviser to the Secretary for Alaskan Affairs
- DIGS05001 Special Assistant to the Director Bureau of Land Management
- DIGS60025 Special Assistant to the Secretary
- DIGS60068 Associate Director—House to the Director, Congressional and Legislative Affairs
- DIGS60133 Chief Office of Congressional and Legislative Affairs to the Director, External and Intergovernmental Affairs
- DIGS60467 Special Assistant to the Director, External and Intergovernmental Affairs
- DIGS60525 Special Assistant to the Assistant Secretary-Land and Minerals Management
- DIGS60526 Special Assistant to the Chief of Staff
- DIGS60561 Special Assistant to the Secretary for Alaska to the Chief of Staff
- DIGS60567 White House Liaison to the Chief of Staff
- DIGS61012 Special Assistant—Advance to the Director of Scheduling and Advance
- DIGS61015 Special Assistant to the Secretary to the Chief of Staff
- DIGS61018 Special Assistant to the White House Liaison
- DIGS61020 Speechwriter to the Director, Office of Communications
- DIGS61022 Deputy Press Secretary to the Director, Office of Communications
- DIGS61024 Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks
- DIGS61025 Director—Scheduling and Advance to the Chief of Staff
- DIGS61026 Deputy Director—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs
- DIGS61027 Special Assistant to the Associate Deputy Secretary
- DIGS61028 Deputy Director, Take Pride In America to the Executive Director Take Pride In America
- DIGS61029 Special Assistant to the Executive Director Take Pride In America
- DIGS61030 Press Secretary to the Director, Office of Communications
- DIGS61031 Special Assistant—Advance to the Director—Scheduling and Advance
- DIGS61032 Special Assistant—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs
- DIGS61034 Special Assistant to the Chief of Staff
- DIGS61035 Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement
- DIGS61037 Special Assistant to the Assistant Secretary for Water and Science
- DIGS61038 Special Assistant to the Director Minerals Management Service

- DIGS70002 Special Assistant to the Director, National Park Service
- DIGS70005 Assistant Director, Legislative and Congressional Affairs to the Director National Park Service
- DIGS70006 Confidential Assistant to the Director National Park Service
- DIGS70011 Special Assistant (Communications) to the Director, External and Intergovernmental Affairs
- DIGS79001 Special Assistant to the Director, External and Intergovernmental Affairs
- Section 213.3313 Department of Agriculture*
- DAGS00139 Director of External Affairs to the Administrator for Risk Management
- DAGS00154 Special Assistant to the Chief of Staff
- DAGS00158 Director of Constituent Affairs to the Deputy Chief of Staff
- DAGS00161 Special Assistant to the Chief, Natural Research Conservation Service
- DAGS00164 Director of Web Design to the Deputy Chief of Staff
- DAGS00174 Confidential Assistant to the Deputy Assistant Secretary
- DAGS00176 Confidential Assistant to the Deputy Assistant Secretary
- DAGS00179 Special Assistant to the Administrator for Risk Management
- DAGS00183 Director, Tobacco Programs to the Deputy Administrator
- DAGS00190 Confidential Assistant to the Administrator, Farm Service Agency
- DAGS00192 Special Assistant to the Chief Information Officer
- DAGS00200 Special Assistant to the Secretary
- DAGS00202 Special Assistant to the Under Secretary for Rural Development
- DAGS00604 Confidential Assistant to the Director, Office of Business and Program Integration
- DAGS00609 Special Assistant to the Associate Assistant Secretary for Civil Rights
- DAGS00611 Director to the Administrator, Food and Nutrition Service
- DAGS00701 Deputy Director, Office of Intergovernmental Affairs to the Director, Intergovernmental Affairs
- DAGS00706 Confidential Assistant to the Deputy Assistant Secretary for Congressional Relations
- DAGS00709 Special Assistant to the Under Secretary for Rural Development
- DAGS00715 Confidential Assistant to the Secretary
- DAGS00716 Special Assistant to the Administrator to the Administrator, Animal and Plant Health Inspection Service
- DAGS00717 Special Assistant to the Administrator, Food and Nutrition Service
- DAGS00718 Special Assistant to the Administrator, Farm Service Agency
- DAGS00719 Special Assistant to the Deputy Under Secretary for Rural Economic Community Development
- DAGS00721 Confidential Assistant to the Administrator for Risk Management
- DAGS00723 Special Assistant to the Administrator, Farm Service Agency
- DAGS00724 Confidential Assistant to the Under Secretary for Research, Education and Economics
- DAGS00725 Special Assistant to the Administrator, Foreign Agricultural Service
- DAGS00727 Special Assistant to the Under Secretary for Natural Resources and Environment
- DAGS00728 Confidential Assistant to the Under Secretary for Rural Development
- DAGS00729 Special Assistant to the Administrator, Rural Business Service
- DAGS00730 Special Assistant to the Deputy Assistant Secretary for Administration
- DAGS00731 Special Assistant to the Chief to the Chief, Natural Research Conservation Service
- DAGS00733 Staff Assistant to the Executive Director for State Operations
- DAGS00735 Staff Assistant to the Under Secretary for Marketing and Regulatory Programs
- DAGS00736 Staff Assistant to the Under Secretary for Marketing and Regulatory Programs
- DAGS00737 Staff Assistant to the Special Assistant, Office of the Secretary
- DAGS00738 Staff Assistant to the Under Secretary for Food Safety
- DAGS00739 Staff Assistant to the Administrator for Risk Management
- DAGS00741 Special Assistant to the Administrator, Rural Utilities Service
- DAGS00744 Confidential Assistant to the Deputy Under Secretary for Rural Development
- DAGS00746 Confidential Assistant to the Deputy Under Secretary for Rural Development
- DAGS00750 Confidential Assistant to the Deputy Under Secretary for Rural Development
- DAGS00753 Special Assistant to the Deputy Under Secretary for Rural Development
- DAGS00754 Staff Assistant to the Associate Administrator for Management
- DAGS00756 Confidential Assistant to the Deputy Assistant Secretary for Congressional Relations
- DAGS00757 Special Assistant to the Deputy Under Secretary, Research, Education and Economics
- DAGS00758 Confidential Assistant to the Deputy Assistant Secretary for Congressional Relations
- DAGS00760 Confidential Assistant to the Administrator, Foreign Agricultural Service
- DAGS00761 Confidential Assistant to the Administrator, Food and Nutrition Service
- DAGS00762 Confidential Assistant to the Administrator, Rural Housing Service
- DAGS00763 Staff Assistant to the Under Secretary for Natural Resources and Environment
- DAGS00765 Staff Assistant to the Under Secretary for Research, Education and Economics
- DAGS00766 Confidential Assistant to the Administrator, Rural Housing Service
- DAGS00768 Special Assistant to the Administrator, Rural Business Service
- DAGS00769 Confidential Assistant to the Deputy Administrator-Program Operations
- DAGS00770 Special Assistant to the Administrator, Rural Housing Service
- DAGS00771 Staff Assistant to the Under Secretary for Marketing and Regulatory Programs
- DAGS00773 Special Assistant to the Secretary
- DAGS00774 Confidential Assistant to the Secretary
- DAGS00775 Special Assistant to the Chief Information Officer
- DAGS00776 Staff Assistant to the Secretary
- DAGS00777 Special Assistant to the Chief to the Chief, Natural Research Conservation Service
- DAGS00778 Director of Faith-Based and Community Initiatives to the Secretary
- DAGS00779 Confidential Assistant to the Executive Director, Center for Nutrition Policy and Promotion
- DAGS00780 Confidential Assistant to the Administrator, Foreign Agricultural Service
- DAGS00781 Staff Assistant to the Administrator, Food Safety and Inspection Service
- DAGS00782 Staff Assistant to the Associate Administrator for Management
- DAGS00784 Special Assistant to the Assistant Secretary for Congressional Relations
- DAGS00785 Special Assistant to the Administrator to the Under Secretary for Marketing and Regulatory Programs

- DAGS00786 Special Assistant to the Assistant Secretary for Administration
- DAGS00787 Director of Advance to the Director of Communications
- DAGS00788 Press Secretary to the Director of Communications
- DAGS00789 Staff Assistant to the Secretary
- DAGS00790 Confidential Assistant to the Administrator for Risk Management
- DAGS00795 Confidential Assistant to the Deputy Administrator-Program Operations
- DAGS00796 Congressional Liaison to the Deputy Assistant Secretary
- DAGS00798 Confidential Assistant to the Administrator, Rural Housing Service
- DAGS00799 Speech Writer to the Director of Communications
- DAGS00800 Confidential Assistant to the Administrator, Rural Housing Service
- DAGS00801 Staff Assistant to the Secretary
- DAGS00803 Director, Intergovernmental Affairs to the Deputy Assistant Secretary
- DAGS00806 Deputy Director of Advance to the Director of Communications
- DAGS60110 Special Assistant to the Secretary
- DAGS60114 Confidential Assistant to the Deputy Secretary
- DAGS60116 Confidential Assistant to the Under Secretary for Rural Development
- DAGS60129 Special Assistant to the Administrator for Risk Management
- DAGS60135 Confidential Assistant to the Administrator, Foreign Agricultural Service
- DAGS60138 Special Assistant to the Administrator, Rural Utilities Service
- DAGS60140 Confidential Assistant to the Director, Office of Small and Disadvantaged Business Utilization
- DAGS60159 Special Assistant to the Administrator, Foreign Agricultural Service
- DAGS60162 Assistant to the Deputy Administrator for Commodity Operations
- DAGS60163 Director Native American Programs to the Assistant Secretary for Congressional Relations
- DAGS60231 Director, Legislative and Public Affairs Staff to the Deputy Under Secretary for Rural Development
- DAGS60263 Special Assistant to the Chief, Natural Research Conservation Service
- DAGS60332 Confidential Assistant to the Administrator, Rural Business Service
- DAGS60384 Confidential Assistant to the Secretary
- DAGS60436 Confidential Assistant to the Administrator, Rural Business Service
- DAGS60451 Special Assistant to the Administrator, Farm Service Agency
- DAGS60534 Confidential Assistant to the Director of Communications
- DAGS60592 Special Assistant to the Administrator, Farm Service Agency
- Section 213.3314 Department of Commerce*
- DCGS00161 Confidential Assistant to the Under Secretary for International Trade
- DCGS00181 Senior Advisor to the Assistant Secretary for Telecommunications and Information
- DCGS00200 Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
- DCGS00202 Legislative Affairs Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DCGS00218 Senior Advisor to the Regional Administrator Northwest Region
- DCGS00220 Confidential Assistant to the Chief of Staff
- DCGS00227 Confidential Assistant to the National Director, Minority Business Development Agency
- DCGS00237 Special Assistant to the Deputy Assistant Secretary for Industry Analysis
- DCGS00252 Confidential Assistant to the Director, Office of Business Liaison
- DCGS00257 Confidential Assistant to the Deputy Assistant Secretary for Europe
- DCGS00267 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DCGS00278 Special Assistant to the Assistant Secretary for Export Administration
- DCGS00290 Special Assistant to the Director, Office of Business Liaison
- DCGS00298 Special Assistant to the Deputy Assistant Secretary for Communications and Information
- DCGS00306 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DCGS00315 Director of Public Affairs to the Assistant Secretary for Economic Development
- DCGS00321 Chief of Congressional Affairs to the Associate Director for Communications
- DCGS00326 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
- DCGS00330 Special Assistant to the Director Advocacy Center
- DCGS00344 Deputy Press Secretary to the Director of Public Affairs
- DCGS00358 Special Assistant to the Assistant Secretary for Manufacturing and Services
- DCGS00359 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
- DCGS00368 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
- DCGS00386 Confidential Assistant to the Director, Office of Legislative Affairs
- DCGS00389 Senior Advisor to the Assistant Secretary for Import Administration
- DCGS00395 Confidential Assistant to the Director of Global Trade Programs
- DCGS00400 Deputy Press Secretary to the Director of Public Affairs
- DCGS00419 Confidential Assistant to the Director of Global Trade Programs
- DCGS00422 Confidential Assistant to the Executive Director for Trade Promotion and Outreach
- DCGS00429 Confidential Assistant to the Director Advocacy Center
- DCGS00433 Senior Policy Advisor to the Chief of Staff
- DCGS00435 Confidential Assistant to the Deputy Secretary
- DCGS00438 Director of Advisory Committees to the Assistant Secretary for Manufacturing and Services
- DCGS00447 Confidential Assistant to the Director of Scheduling
- DCGS00452 Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations
- DCGS00457 Confidential Assistant to the Director of Scheduling
- DCGS00461 Confidential Assistant to the Chief Economist and Special Advisor to the Secretary
- DCGS00465 Confidential Assistant to the Deputy Director
- DCGS00468 Special Assistant to the Under Secretary for Export Administration
- DCGS00486 Deputy Director of Speechwriting to the Director for Speechwriting
- DCGS00488 Confidential Assistant to the Director, Executive Secretariat
- DCGS00507 Confidential Assistant to the Associate Director for Communications
- DCGS00529 Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
- DCGS00531 Confidential Assistant to the Executive Director for Trade Promotion and Outreach
- DCGS00534 Confidential Assistant to the Deputy Assistant Secretary for Transportation and Machinery

- DCGS00536 Special Assistant to the Director, Office of White House Liaison
- DCGS00539 Special Assistant to the Director, Executive Secretariat
- DCGS00546 Special Assistant to the Deputy Assistant Secretary for Europe
- DCGS00553 Confidential Assistant to the Assistant Secretary for Export Administration
- DCGS00558 Confidential Assistant to the Director of Advance
- DCGS00560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
- DCGS00571 Senior Policy Advisor to the Deputy Assistant Secretary for Service Industries, Tourism and Finance
- DCGS00573 Special Assistant to the Deputy Assistant Secretary for Export Promotion Services
- DCGS00575 Confidential Assistant to the Executive Assistant
- DCGS00576 Deputy Director, Office of Advance to the Director of Advance
- DCGS00592 Legislative Affairs Specialist to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office
- DCGS00609 Confidential Assistant to the Chief of Staff
- DCGS00610 Chief of Staff to the Under Secretary for International Trade
- DCGS00611 Senior Advisor to the Under Secretary for International Trade
- DCGS00620 Director, Office of Legislative Affairs to the Under Secretary for International Trade
- DCGS00628 Confidential Assistant to the Director of Public Affairs
- DCGS00629 Deputy Director of Public Affairs to the Director of Public Affairs
- DCGS00631 Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
- DCGS00639 Press Secretary to the Director of Public Affairs
- DCGS00640 Speechwriter to the Director of Public Affairs
- DCGS00641 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
- DCGS00643 Confidential Assistant to the Deputy Under Secretary and Deputy Director of the United States Patent and Trademark Office
- DCGS00658 Confidential Assistant to the Under Secretary for International Trade
- DCGS00660 Public Affairs Director to the Assistant Secretary for Manufacturing and Services
- DCGS00663 Executive Director, White House Initiative on Asian Americans and Pacific Islanders to the National Director, Minority Business Development Agency
- DCGS00675 Special Assistant to the Assistant Secretary for Market Access and Compliance
- DCGS00680 Deputy Press Secretary to the Director of Public Affairs
- DCGS00684 Director for Speechwriting to the Director of Public Affairs
- DCGS00686 Director of Advance to the Chief of Staff
- DCGS00689 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
- DCGS00692 Director of Congressional Affairs to the Deputy Assistant Secretary for External Affairs and Communication
- DCGS17901 Public Affairs Specialist to the Director of Public Affairs
- DCGS60004 Deputy Director to the Director, Executive Secretariat
- DCGS60173 Senior Advisor to the Assistant Secretary for Economic Development
- DCGS60193 Special Assistant to the Deputy Assistant Secretary for Transportation and Machinery
- DCGS60225 Director, Congressional and Public Affairs to the Assistant Secretary for Export Administration
- DCGS60266 Senior Advisor to the Assistant Secretary for Import Administration
- DCGS60276 Executive Assistant to the Under Secretary for Economic Affairs
- DCGS60287 Confidential Assistant to the Chief of Staff to the Deputy Secretary
- DCGS60289 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs
- DCGS60299 Confidential Assistant to the Assistant Secretary for Economic Development
- DCGS60302 Director of External Affairs to the Director, Office of Public and Constituent Affairs
- DCGS60309 Senior Advisor to the National Director, Minority Business Development Agency
- DCGS60317 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
- DCGS60343 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
- DCGS60353 Confidential Assistant to the Executive Director for Trade Promotion and Outreach
- DCGS60354 Public Affairs Specialist to the Assistant Secretary for Telecommunications and Information
- DCGS60371 Policy Advisor to the Chief of Staff
- DCGS60372 Senior Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
- DCGS60385 Senior Analyst to the Director
- DCGS60393 Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
- DCGS60394 Deputy Director, Office of Public Affairs to the Director of Public Affairs
- DCGS60396 Legislative Affairs Specialist to the Director, Office of Legislative Affairs
- DCGS60424 Legislative Affairs Specialist to the Director, Office of Legislative Affairs
- DCGS60440 Special Assistant to the Director Office of White House Liaison
- DCGS60448 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
- DCGS60458 Deputy Director of Marketing for Outreach to the Executive Director for Trade Promotion and Outreach
- DCGS60463 Confidential Assistant to the Deputy Under Secretary and Deputy Director of the United States Patent and Trademark Office
- DCGS60490 Director of Scheduling to the Chief of Staff
- DCGS60527 Executive Assistant to the Secretary
- DCGS60548 Confidential Assistant to the Chief of Staff
- DCGS60574 Protocol Officer to the Director, Office of White House Liaison
- DCGS60583 Special Assistant to the Assistant Secretary for Administrator and Chief Financial Officer
- DCGS60604 Director, Office of Technology and E-Commerce to the Assistant Secretary for Manufacturing and Services
- DCGS60618 Special Assistant to the Deputy Under Secretary and Deputy Director of the United States Patent and Trademark Office
- DCGS60624 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
- DCGS60652 Confidential Assistant to the Executive Director for Trade Promotion and Outreach
- DCGS60670 Director Office of Business Liaison to the Chief of Staff for National Oceanic and Atmospheric Administration
- DCGS60676 Public Affairs Specialist to the Director of Public Affairs

- DCGS60681 Speechwriter to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office
- DCGS60688 Confidential Assistant to the Director of Global Trade Programs
- DCGS60694 Senior Advisor to the Director, Bureau of the Census to the Director
- Section 213.3315 Department of Labor*
- DLGS60003 Special Assistant to the Chief of Staff
- DLGS60007 Special Assistant to the Secretary of Labor
- DLGS60008 Special Assistant to the Secretary of Labor
- DLGS60009 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60015 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60017 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60025 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60042 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60043 Special Assistant to the Assistant Secretary for Occupational Safety and Health
- DLGS60045 Staff Assistant to the Assistant Secretary for Public Affairs
- DLGS60055 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60074 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60076 Special Assistant to the Assistant Secretary for Employment Standards
- DLGS60078 Staff Assistant to the Assistant Secretary for Policy
- DLGS60079 Special Assistant to the Assistant Secretary for Policy
- DLGS60081 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60084 Special Assistant to the Director of Scheduling and Advance
- DLGS60091 Special Assistant to the Assistant Secretary for Administration and Management
- DLGS60092 Senior Advisor to the Deputy Solicitor (National Operations)
- DLGS60093 Staff Assistant to the Secretary of Labor
- DLGS60094 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60099 Special Assistant to the Deputy Assistant Secretary for Employment and Training
- DLGS60101 Chief of Staff to the Assistant Secretary for Employment Standards
- DLGS60103 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60104 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60105 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60107 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60109 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60110 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60111 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60112 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60118 Staff Assistant to the Secretary of Labor
- DLGS60121 Special Assistant to the Secretary of Labor
- DLGS60122 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60123 Special Assistant to the Deputy Assistant Secretary
- DLGS60126 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
- DLGS60127 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
- DLGS60130 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60131 Special Assistant to the Assistant Secretary for Employment and Training
- DLGS60133 Chief of Staff to the Director of the Women's Bureau
- DLGS60135 Special Assistant to the Secretary of Labor
- DLGS60137 Staff Assistant to the Executive Secretary
- DLGS60138 Chief of Staff to the Assistant Secretary for Mine Safety and Health
- DLGS60144 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
- DLGS60145 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60146 Attorney Advisor to the Solicitor of Labor
- DLGS60147 Attorney Advisor to the Solicitor of Labor
- DLGS60149 Special Assistant to the Director of the Women's Bureau
- DLGS60159 Special Assistant to the Deputy Under Secretary for International Affairs
- DLGS60161 Staff Assistant to the Assistant Secretary for Public Affairs
- DLGS60163 Chief of Staff to the Assistant Secretary for Occupational Safety and Health
- DLGS60168 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60169 Deputy Director, Executive Secretariat to the Executive Secretary
- DLGS60170 Special Assistant to the Secretary of Labor
- DLGS60171 Deputy Director, Scheduling and Advance to the Secretary of Labor
- DLGS60172 Special Assistant to the Director, Office of Faith Based and Community Initiatives
- DLGS60173 Chief of Staff to the Assistant Secretary for Disability Employment Policy
- DLGS60174 Special Assistant to the Secretary of Labor
- DLGS60177 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60181 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60182 Staff Assistant to the Senior Advisor to the Secretary
- DLGS60183 Special Assistant to the Assistant Secretary for Occupational Safety and Health
- DLGS60185 Deputy Director to the Director, Office of Faith Based and Community Initiatives
- DLGS60187 Special Assistant to the Assistant Secretary for Employment and Training
- DLGS60189 Special Assistant to the Chief Financial Officer
- DLGS60190 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60192 Chief of Staff to the Assistant Secretary for Employee Benefits Security
- DLGS60195 Special Assistant to the Assistant Secretary for Employment Standards
- DLGS60196 Special Assistant to the Assistant Secretary for Veterans Employment and Training

- DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training
- DLGS60204 Special Assistant to the Assistant Secretary for Veterans Employment and Training
- DLGS60205 Deputy Director, 21st Century Workforce to the Director, 21st Century Workforce
- DLGS60208 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60209 Special Assistant to the Assistant Secretary for Veterans Employment and Training
- DLGS60210 Special Assistant to the Director, Office of Faith Based and Community Initiatives
- DLGS60212 Special Assistant to the Director of Operations
- DLGS60214 Staff Assistant to the Secretary of Labor
- DLGS60219 Staff Assistant to the Director of Operations
- DLGS60220 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60221 Special Assistant to the Assistant Secretary for Public Affairs
- DLGS60229 Special Assistant to the Assistant Secretary for Disability Employment Policy
- DLGS60230 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
- DLGS60231 Staff Assistant to the Counselor, Office of the Secretary
- DLGS60232 Special Assistant to the Assistant Secretary for Administration and Management
- DLGS60233 Special Assistant to the Assistant Secretary for Employment Standards
- DLGS60234 Chief of Staff to the Assistant Secretary for Policy
- DLGS60236 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60237 Special Assistant to the Secretary of Labor
- DLGS60238 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60239 Staff Assistant to the Executive Assistant to the Secretary
- DLGS60240 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60244 Special Assistant to the Director, Office of Faith Based and Community Initiatives
- DLGS60245 Special Assistant to the Secretary of Labor
- DLGS60246 Staff Assistant to the Director, 21st Century Workforce
- DLGS60248 Special Assistant to the Director of Public Liaison
- DLGS60252 Special Assistant to the Director, 21st Century Workforce
- DLGS60253 Special Assistant to the Deputy Secretary of Labor
- DLGS60254 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60255 Special Assistant to the Executive Assistant to the Secretary
- DLGS60256 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
- DLGS60257 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DLGS60260 Special Assistant to the Director of Public Liaison
- DLGS60264 Chief of Staff to the Wage and Hour Administrator
- DLGS60266 Chief of Staff to the Deputy Under Secretary for International Affairs
- DLGS60267 Speechwriter to the Assistant Secretary for Public Affairs
- DLGS60269 Special Assistant to the Secretary of Labor
- DLGS60270 Special Assistant to the Assistant Secretary for Employment and Training
- DLGS60272 Special Assistant to the Director of Public Liaison
- DLGS60273 Special Assistant to the Assistant Secretary for Administration and Management
- DLGS60277 Special Assistant to the Assistant Secretary for Administration and Management
- DLGS60278 Staff Assistant to the Chief Financial Officer
- Section 213.3316 Department of Health and Human Services*
- DHGS00268 Special Assistant to the Executive Secretary
- DHGS00378 Special Assistant to the Assistant Secretary for Public Affairs
- DHGS00492 Deputy White House Liaison for Boards and Committees to the Chief of Staff
- DHGS60001 Special Assistant for Special Projects to the Secretary, Health and Human Services
- DHGS60002 Special Assistant to the Chief of Staff
- DHGS60003 Special Assistant to the Deputy Commissioner for Policy
- DHGS60004 Director, Secretary's Prevention Initiatives to the Assistant Secretary, Health
- DHGS60005 Confidential Assistant to the Assistant Secretary for Aging (Commissioner for Aging)
- DHGS60006 Confidential Assistant to the Director of Communications
- DHGS60007 Special Assistant to the Associate Commissioner for External Relations
- DHGS60008 Senior Advisor to the Assistant Secretary for Children and Families
- DHGS60009 Special Assistant to the Assistant Secretary for Public Health Emergency Preparedness
- DHGS60013 Confidential Assistant (Scheduling) to the Director of Scheduling
- DHGS60014 Director, Correspondence Control Center to the Executive Secretary to the Department
- DHGS60015 Deputy Director, Center for Faith Based and Community Initiatives to the Director, Center for Faith Based and Community Initiatives
- DHGS60016 Confidential Assistant to the Director, Center for Faith Based and Community Initiatives
- DHGS60017 Director of Scheduling to the Chief of Staff
- DHGS60018 Deputy Director, Scheduling and Advance to the Director of Scheduling
- DHGS60020 Senior Advisor to the Assistant Secretary for Health
- DHGS60021 Special Assistant to the Director, Office of Community Services
- DHGS60026 Special Assistant to the Director, Office of External Affairs
- DHGS60052 Chief Acquisitions Officer to the Chief of Staff
- DHGS60167 Confidential Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
- DHGS60187 Special Assistant to the Assistant Secretary for Public Affairs
- DHGS60236 Secretary's Regional Representative for Intergovernmental Affairs to the Director of Intergovernmental Affairs
- DHGS60237 Regional Director, New York, New York, Region II to the Director of Intergovernmental Affairs
- DHGS60240 Regional Director, Dallas, Texas, Region VI to the Director of Intergovernmental Affairs
- DHGS60252 Regional Director, Denver, Colorado, Region VIII to the Director of Intergovernmental Affairs
- DHGS60255 Regional Director, Chicago, Illinois-Region V to the Director of Intergovernmental Affairs
- DHGS60293 Special Assistant to the Commissioner Administration for Children Youth and Families
- DHGS60336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
- DHGS60345 Director of Public Affairs to the Assistant Secretary for Children and Families
- DHGS60347 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative (Congressional Liaison)

- DHGS60363 Director, Congressional Liaison Office to the Assistant Secretary for Legislation
- DHGS60374 Confidential Assistant to the Executive Secretary to the Department
- DHGS60383 Special Assistant to the Assistant Secretary for Public Affairs
- DHGS60399 Special Assistant to the Commissioner Administration for Children Youth and Families
- DHGS60412 Regional Director, San Francisco, California, Region IX to the Director of Intergovernmental Affairs
- DHGS60417 Regional Director, Kansas City, Missouri, Region VII to the Director of Intergovernmental Affairs
- DHGS60427 Executive Director, President's Committee for People with Intellectual Disabilities to the Assistant Secretary for Children and Families
- DHGS60436 Associate Commissioner to the Assistant Secretary for Children and Families
- DHGS60497 Special Assistant for International and Immigration Issues to the Assistant Secretary for Children and Families
- DHGS60512 Special Assistant to the Assistant Secretary for Children and Families to the Assistant Secretary for Children and Families
- DHGS60513 Special Assistant to the Commissioner for Child Support Enforcement to the Director of Public Affairs
- DHGS60519 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Policy and Communications)
- DHGS60523 Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary, Health
- DHGS60526 Confidential Assistant to the Deputy Secretary, Health and Human Services
- DHGS60527 Confidential Assistant (Scheduling) to the Director of Scheduling
- DHGS60539 Special Assistant to the General Counsel
- DHGS60541 Special Assistant to the Deputy Director Office of Child Support Enforcement
- DHGS60542 Special Assistant to the Administrator Centers for Medicare and Medicaid Services
- DHGS60553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Communications)
- DHGS60556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
- DHGS60627 Confidential Assistant to the Administrator, Substance Abuse and Mental Health Service
- DHGS60629 Executive Director, President's Commission of HIV/AIDS to the Assistant Secretary, Health
- DHGS60661 Special Assistant to the Deputy Secretary, Health and Human Services
- DHGS60665 Deputy Director for Policy, Intergovernmental Affairs to the Director of Intergovernmental Affairs
- DHGS60686 Special Assistant to the Director of Medicare Outreach and Special Advisor to the Secretary
- DHGS60689 Director of Media Affairs to the Director, Office of External Affairs
- DHGS60692 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative Affairs (Congressional Liaison)
- DHGS60694 Confidential Assistant to the Director of Medicare Outreach and Special Advisor to the Secretary
- DHGS60695 Confidential Assistant (Briefing Book and Advance) to the Director of Scheduling
- DHGS60696 Confidential Assistant (Scheduling) to the Director of Scheduling
- Section 213.3317 Department of Education*
- DBGS00081 Special Assistant to the Director, Faith-Based and Community Initiatives Center
- DBGS00094 Special Assistant to the Deputy Assistant Secretary for Regional Services
- DBGS00198 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
- DBGS00202 Deputy Assistant Secretary for Policy to the Assistant Secretary for Elementary and Secondary Education
- DBGS00204 Special Assistant to the Chief Financial Officer
- DBGS00211 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
- DBGS00216 Deputy Secretary's Regional Representative, Region X to the Assistant Secretary for Intergovernmental and Interagency Affairs
- DBGS00218 Director, White House Initiative on Tribal Colleges and Universities to the Chief of Staff
- DBGS00222 Confidential Assistant to the Senior Advisor to the Secretary
- DBGS00231 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education
- DBGS00236 Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
- DBGS00237 Executive Assistant to the General Counsel
- DBGS00246 Confidential Assistant to the Deputy Assistant Secretary
- DBGS00249 Special Assistant to the Assistant Secretary for Postsecondary Education
- DBGS00260 Deputy Secretary's Regional Representative Region VIII to the Deputy Assistant Secretary for Regional Services
- DBGS00262 Confidential Assistant to the Senior Advisor to the Secretary
- DBGS00265 Special Assistant to the Assistant Secretary for Management/Chief Information Officer
- DBGS00271 Special Assistant to the Chief of Staff
- DBGS00276 Confidential Assistant to the Chief of Staff
- DBGS00280 Confidential Assistant to the Chief of Staff
- DBGS00284 Confidential Assistant (Protocol) to the Deputy Chief of Staff for Operations
- DBGS00285 Special Assistant (Education Attache to the United States Mission to the United Nations Educational, Scientific and Cultural Organization) to the Secretary
- DBGS00287 Confidential Assistant to the Deputy Assistant Secretary
- DBGS00290 Special Assistant to the Assistant Secretary for Vocational and Adult Education
- DBGS00294 Special Assistant (Deputy Director, White House Liaison) to the Special Assistant (White House Liaison)
- DBGS00296 Special Assistant to the Director, Faith-Based and Community Initiatives Center
- DBGS00299 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS00301 Deputy Assistant Secretary for Regional Services to the Assistant Secretary for Intergovernmental and Interagency Affairs
- DBGS00303 Director, White House Initiative on Hispanic Education to the Chief of Staff
- DBGS00305 Special Assistant to the Director Office of Public Affairs (Communications Director)
- DBGS00306 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
- DBGS00307 Special Assistant to the Director, Faith-Based and Community Initiatives Center
- DBGS00308 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
- DBGS00312 Confidential Assistant to the Assistant Secretary for Postsecondary Education
- DBGS00313 Deputy Secretary's Regional Representative to the

- Assistant Secretary for Intergovernmental and Interagency Affairs
- DBGS00316 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
- DBGS00317 Confidential Assistant to the Deputy Assistant Secretary for Regional Services
- DBGS00318 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
- DBGS00323 Confidential Assistant to the Deputy Under Secretary for Innovation and Improvement
- DBGS00324 Special Assistant to the Senior Advisor to the Secretary
- DBGS00325 Press Secretary to the Director, Office of Public Affairs (Communications Director)
- DBGS00326 Special Assistant to the Senior Advisor to the Secretary
- DBGS00327 Special Assistant to the Deputy Director of Communications, Office of Public Affairs
- DBGS00329 Special Assistant to the Chief of Staff
- DBGS00331 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
- DBGS00332 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS00335 Confidential Assistant to the Deputy Secretary of Education
- DBGS00336 Special Assistant to the Senior Advisor to the Secretary
- DBGS00337 Confidential Assistant to the Senior Advisor to the Secretary
- DBGS00338 Confidential Assistant to the Deputy Secretary of Education
- DBGS00339 Confidential Assistant to the Deputy Secretary of Education
- DBGS00340 Confidential Assistant to the Deputy Assistant Secretary
- DBGS00343 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
- DBGS00344 Special Assistant to the Deputy Assistant Secretary
- DBGS00345 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS00347 Confidential Assistant to the Deputy Secretary of Education
- DBGS00348 Confidential Assistant to the Deputy Chief of Staff for Operations
- DBGS00352 Confidential Assistant to the Deputy Director, Office of Public Affairs
- DBGS00353 Special Assistant to the Director, Office of Scheduling and Briefing
- DBGS00355 Confidential Assistant to the Deputy Secretary of Education
- DBGS00357 Confidential Assistant to the Deputy Assistant Secretary for Regional Services
- DBGS00359 Confidential Assistant to the Deputy Assistant Secretary for Enforcement
- DBGS00360 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services
- DBGS00362 Deputy Secretary's Regional Representative—Region II to the Deputy Assistant Secretary for Regional Services
- DBGS00367 Special Assistant to the Secretary
- DBGS00368 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS00369 Confidential Assistant to the Assistant Deputy Secretary for Innovation and Improvement
- DBGS00370 Confidential Assistant to the Director, Office of Educational Technology
- DBGS00371 Confidential Assistant to the Chief of Staff
- DBGS00372 Confidential Assistant to the Assistant Secretary for Civil Rights
- DBGS00373 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education
- DBGS00374 Special Assistant to the Chief of Staff
- DBGS00375 Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
- DBGS00376 Director, Scheduling and Advance Staff to the Chief of Staff
- DBGS00377 Confidential Assistant to the Deputy Assistant Secretary
- DBGS00378 Confidential Assistant to the Deputy Assistant Secretary
- DBGS00379 Confidential Assistant to the Assistant Secretary for Postsecondary Education
- DBGS00380 Special Assistant to the Assistant Secretary for Management/Chief Information Officer
- DBGS00381 Confidential Assistant to the Deputy General Counsel for Departmental and Legislative Service
- DBGS00386 Special Assistant to the Chief of Staff
- DBGS00387 Confidential Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools
- DBGS00388 Special Assistant to the Chief of Staff
- DBGS00389 Special Assistant to the Chief of Staff
- DBGS00390 Confidential Assistant to the Director, Scheduling and Advance Staff
- DBGS00391 Confidential Assistant to the Secretary
- DBGS00392 Special Assistant to the Secretary
- DBGS00394 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS00396 Special Assistant to the Director, Faith-Based and Community Initiatives Center
- DBGS00397 Special Assistant to the Chief of Staff
- DBGS00398 Confidential Assistant to the Chief of Staff
- DBGS00400 Deputy Assistant Secretary for Planning to the Chief of Staff
- DBGS00403 Confidential Assistant to the Chief of Staff
- DBGS00405 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
- DBGS60015 Special Assistant to the Deputy Assistant Secretary for Regional Services
- DBGS60037 Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary for Intergovernmental and Interagency Affairs
- DBGS60038 Secretary's Regional Representative, Region I, Boston, MA, to the Deputy Assistant Secretary for Regional Services
- DBGS60052 Deputy Director to the Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students
- DBGS60055 Secretary's Regional Representative, Region VIII to the Deputy Assistant Secretary for Regional Services
- DBGS60064 Secretary's Regional Representative, Region II to the Deputy Assistant Secretary for Regional Services
- DBGS60075 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS60077 Special Assistant to the Director, Office of Scheduling and Briefing
- DBGS60085 Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services
- DBGS60092 Secretary's Regional Representative, Region V to the Deputy Assistant Secretary for Regional Services
- DBGS60093 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
- DBGS60096 Special Assistant to the Deputy Assistant Secretary for Regional Services
- DBGS60113 Special Assistant to the Director, Office of Public Affairs (Communications Director)
- DBGS60115 Secretary's Regional Representative, Region X to the Deputy Assistant Secretary for Regional Services
- DBGS60122 Secretary's Regional Representative, Region VII to the

- Deputy Assistant Secretary for Regional Services  
 DBGS60126 Deputy Secretary's Regional Representative, Region I to the Secretary's Regional Representative, Region I, Boston, MA  
 DBGS60127 Special Assistant to the Assistant Secretary for Vocational and Adult Education  
 DBGS60129 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services  
 DBGS60130 Special Assistant to the Director, Office of English Language Enhancement, and Academic Achievement for Limited English Proficient Students  
 DBGS60142 Secretary's Regional Representative, Region IV to the Deputy Assistant Secretary for Regional Services  
 DBGS60143 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center  
 DBGS60145 Confidential Assistant to the Deputy Director  
 DBGS60150 Special Assistant to the Chief of Staff  
 DBGS60151 Special Assistant to the Chief of Staff  
 DBGS60174 Special Assistant to the Chief Financial Officer  
 DBGS60176 Confidential Assistant to the Deputy Assistant Secretary  
 DBGS60194 Special Assistant to the Director, White House Initiative on Hispanic Education  
 DBGS60197 Confidential Assistant to the Special Assistant, Office of the Secretary
- Section 213.3318 Environmental Protection Agency*  
 EPGS00922 Associate Assistant Administrator to the Assistant Administrator for Research and Development  
 EPGS03300 Public Affairs Specialist to the Associate Administrator for Public Affairs  
 EPGS03500 Senior Policy Advisor to the Deputy Assistant Administrator for Water  
 EPGS03606 Press Secretary to the Associate Assistant Administrator for Public Affairs  
 EPGS04008 Chief of Staff, Office of the Assistant Administrator for Air and Radiation  
 EPGS04014 Public Liaison Specialist to the Assistant Administrator for Enforcement and Compliance Assurance  
 EPGS04022 Senior Advisor to the Deputy Assistant Administrator for Water  
 EPGS04023 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations
- EPGS04024 Special Assistant to the Administrator (Advance Person) to the Associate Administrator for Public Affairs  
 EPGS04025 Counselor to the Administrator for Agricultural Policy  
 EPGS04026 Lead Program Analyst to the Administrator  
 EPGS04029 Special Assistant to the Deputy Chief of Staff to the Administrator (Operations)  
 EPGS05017 Senior Advisor to the Administrator  
 EPGS05018 Deputy Associate Administrator for Congressional Affairs to the Associate Administrator for Congressional and Intergovernmental Relations  
 EPGS05019 Program Advisor (Media Relations) to the Associate Administrator for Public Affairs  
 EPGS05020 Director, Office of Long-Range Communications to the Associate Administrator for Public Affairs  
 EPGS05021 Program Advisor to the Associate Administrator for Public Affairs  
 EPGS05022 Program Advisor (Operations) to the Deputy Chief of Staff (Operations)  
 EPGS05023 Audio Visual Producer to the Deputy Chief of Staff (Operations)  
 EPGS05024 Deputy Associate Administrator to the Deputy Chief of Staff (Operations)  
 EPGS05025 Program Assistant to the Assistant Administrator for Environmental Information  
 EPGS05026 Policy Writer to the Deputy Chief of Staff (Operations)  
 EPGS05027 Deputy Associate Administrator for Policy, Economics and Innovation to the Associate Administrator for Policy, Economics and Innovation  
 EPGS05028 Public Liaison Officer to the Deputy Chief of Staff (Operations)  
 EPGS05029 Special Assistant to the Assistant Administrator for Enforcement and Compliance Assurance  
 EPGS05031 Program Specialist to the Assistant Administrator for Administration and Resources Management  
 EPGS05032 Special Assistant (Advance Person) to the Associate Administrator for Public Affairs  
 EPGS05033 Policy Advisor to the Administrator  
 EPGS05034 Program Advisor to the Chief Financial Officer  
 EPGS05036 Program Advisor, Office of Public Affairs, to the Deputy Chief of Staff (Operations)  
 EPGS60065 Recycling Communications Advisor to the Deputy Director, Office of Solid Waste
- EPGS60069 Special Assistant for Communications to the Assistant Administrator for Water  
 EPGS60071 Senior Advisor to the Assistant Administrator for International Activities  
 EPGS60074 Policy Analyst to the Assistant Administrator for Air and Radiation  
 EPGS60076 Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations  
 EPGS60082 Special Assistant to the Associate Administrator  
 EPGS60089 Senior Advisor to the Chief Financial Officer  
 EPGS60090 Program Advisor (Advance Person) to the Deputy Associate Administrator for the Office of Public Affairs
- Section 213.3323 Overseas Private Investment Corporation*  
 PQGS03088 Confidential Assistant to the Confidential Assistant  
 PQGS05007 Special Assistant to Vice President Investment Funds  
 PQGS05008 Confidential Assistant to the Chief of Staff  
 PQGS05017 Confidential Assistant to the Chief of Staff  
 PQGS60018 Executive Assistant to the President  
 PQGS60020 Executive Assistant to the Executive Vice President  
 PQGS60021 Confidential Assistant to the President
- Section 213.3325 United States Tax Court*  
 JCGS60040 Secretary Confidential Assistant to the Chief Judge  
 JCGS60041 Secretary (Confidential Assistant) to the Chief Judge  
 JCGS60042 Secretary (Confidential Assistant) to the Chief Judge  
 JCGS60043 Secretary (Confidential Assistant) to the Chief Judge  
 JCGS60044 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60045 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60046 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60047 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60048 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60049 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60050 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60051 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60052 Secretary (Confidential Assistant) to a Chief Judge  
 JCGS60053 Secretary (Confidential Assistant) to a Chief Judge

- JCGS60054 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60055 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60056 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60057 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60058 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60059 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60060 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60062 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60064 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60065 Secretary (Confidential Assistant) to a Chief Judge
- JCGS60069 Trial Clerk to a Chief Judge
- JCGS60071 Trial Clerk to a Chief Judge
- JCGS60072 Trial Clerk to a Chief Judge
- JCGS60073 Trial Clerk to a Chief Judge
- JCGS60074 Trial Clerk to a Chief Judge
- JCGS60075 Trial Clerk to a Chief Judge
- JCGS60077 Trial Clerk to a Chief Judge
- JCGS60078 Trial Clerk to a Chief Judge
- JCGS60079 Trial Clerk to a Chief Judge
- JCGS60080 Secretary (Confidential Assistant) to a Chief Judge
- Section 213.3327 Department of Veterans Affairs*
- DVGS60011 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
- DVGS60015 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
- DVGS60031 Senior Advisor to the Deputy Secretary of Veterans Affairs
- DVGS60032 Director, Center for Faith Based Community Initiatives to the Assistant Secretary for Public and Intergovernmental Affairs
- DVGS60033 Special Assistant to the Deputy Assistant Secretary for Congressional and Legislative Affairs
- DVGS60095 Special Assistant to the Assistant Secretary for Human Resources and Administration
- DVGS60099 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
- DVGS60106 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs
- Section 213.3328 Broadcasting Board of Governors*
- IBGS00013 Chief of Staff to the Director, Office of Cuba Broadcasting
- IBGS00015 Senior Advisor to the Director
- IBGS00018 Senior Projects Officer to the Director
- IBGS00019 Special Assistant to the Director
- IBGS00020 Special Assistant to the Chairman, Broadcasting Board of Governors
- Section 213.3330 Securities and Exchange Commission*
- SEOT60002 Confidential Assistant to a Commissioner
- SEOT60003 Confidential Assistant to a Commissioner
- SEOT60004 Director of Legislative Affairs to the Director of Communications
- SEOT60005 Confidential Assistant to a Commissioner
- SEOT60008 Secretary (Office Automation) to the Chief Accountant
- SEOT60009 Secretary to the General Counsel of the Commission
- SEOT60011 Speech Writer to the Managing Executive for External Affairs
- SEOT60014 Secretary to the Director, Division of Market Regulation
- SEOT60016 Secretary to the Director, Division of Enforcement
- SEOT60018 Secretary to the Director, Division of Investment Management
- SEOT60019 Secretary to the Director
- SEOT60029 Secretary to the Director, Division of Market Regulation
- SEOT60032 Director of Public Affairs to the Chairman
- SEOT60056 Legislative Affairs Specialist to the Director of Communications
- SEOT60057 Legislative Affairs Specialist to the Director of Legislative Affairs
- Section 213.3331 Department of Energy*
- DEGS00305 Senior Policy Advisor to the Director, Office of Civilian Radioactive Waste Management
- DEGS00318 Advisor, Legislative Affairs to the Assistant Secretary (Conservation and Renewable Energy)
- DEGS00321 Director, Office of Climate Change Programs to the Deputy Assistant Secretary for National Energy Policy
- DEGS00329 Congressional Relations Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration
- DEGS00341 Confidential Assistant to the Deputy Administrator for Defense Programs, National Nuclear Security Administration
- DEGS00342 Trip Coordinator to the Director, Office of Scheduling and Advance
- DEGS00346 Communications Assistant to the Chief of Staff
- DEGS00348 Policy Advisor to the Director, Office of Science
- DEGS00381 Public Affairs Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration
- DEGS00385 Senior Policy Advisor to the Director, Public Affairs
- DEGS00392 Chief of Staff to the Principal Deputy Assistant Secretary
- DEGS00393 Policy Advisor to the Director, Office of Worker and Community Transition
- DEGS00394 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS00395 Special Assistant to the Secretary, Department of Energy
- DEGS00397 Deputy Director of Scheduling and Advance to the Director, Office of Scheduling and Advance
- DEGS00399 Special Assistant to the Director, Office of Economic Impact and Diversity
- DEGS00402 Advance Representative to the Director, Office of Scheduling and Advance
- DEGS00403 Special Assistant to the Chief of Staff
- DEGS00404 Senior Policy Advisor to the Associate Deputy Secretary of Energy
- DEGS00407 Daily Scheduler to the Director, Office of Scheduling and Advance
- DEGS00408 Director, Office of Communications and Outreach to the Principal Deputy Assistant Secretary
- DEGS00409 Special Assistant to the Director, Public Affairs
- DEGS00414 Deputy Director for Public Affairs to the Director, Public Affairs
- DEGS00416 Deputy Assistant Secretary for Environment and Science to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS00421 Deputy Assistant Secretary for Budget and Appropriations to the Assistant Secretary for Congressional and Intergovernmental Affairs
- Section 213.3331 Department of Energy Intergovernmental Affairs*
- DEGS00423 Legislative Specialist to the Deputy Assistant Secretary for Intergovernmental and External Affairs
- DEGS00424 Senior Policy Advisor to the Associate Deputy Secretary to the Associate Chief Information Officer for Operations
- DEGS00425 Senior Policy Advisor to the Director, Nuclear Energy
- DEGS00426 Associate Director to the Director, Office of Economic Impact and Diversity
- DEGS00427 Policy Advisor to the Assistant Secretary for Environment, Safety and Health

- DEGS00428 Policy Advisor to the Deputy Assistant Secretary for International Affairs
- DEGS00431 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management)
- DEGS00433 Senior Advisor to the Executive Director, Secretary of Energy Advisory Board
- DEGS00438 Special Assistant to the Principal Deputy Assistant Secretary for Fossil Energy
- DEGS00439 Policy Advisor to the Principal Deputy Assistant Secretary for Fossil Energy
- DEGS00440 Special Assistant to the Director, Office of Civilian Radioactive Waste Management
- DEGS00441 Senior Advisor to the Assistant Secretary for Policy and International Affairs
- DEGS00442 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS00443 Senior Policy Advisor to the Principal Deputy Assistant Secretary for Fossil Energy
- DEGS00445 Technical Internet Advisor to the Associate Deputy Secretary of Energy
- DEGS00446 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS00448 Special Assistant to the Assistant Secretary of Energy (Environmental Management)
- DEGS00449 Staff Assistant to the Director, Office of Communications and Outreach
- DEGS00450 Special Assistant for Communications to the Director, Office of Communications and Outreach
- DEGS00453 Special Assistant to the Director, Office of Scheduling and Advance
- DEGS00454 Advance Representative to the Director, Office of Scheduling and Advance
- DEGS00455 Special Assistant for Travel and Advance to the White House Liaison
- DEGS00456 Special Assistant to the Assistant Secretary for Environment, Safety and Health
- DEGS00457 Special Assistant to the Assistant Secretary for Environment, Safety and Health
- DEGS00458 Special Assistant to the Secretary, Department of Energy
- DEGS00459 Associate Deputy Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS00460 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS00461 Senior Advisor to the Deputy Secretary of Energy
- DEGS00462 Special Assistant to the Assistant Secretary of Energy (Environmental Management)
- DEGS00463 Scheduler to the Secretary to the Director, Office of Scheduling and Advance
- DEGS00464 Special Assistant to the Director, Office of Electricity and Energy Assurance
- DEGS00466 Special Assistant to the Deputy Administrator for Defense Nuclear Nonproliferation
- DEGS00468 Special Assistant for Communications and Outreach to the Director, Office of Communications and Outreach
- DEGS60121 Special Assistant to the Director, Office of Scheduling and Advance
- DEGS60134 Special Assistant to the Assistant Secretary for Fossil Energy
- DEGS60140 Senior Advisor to the Director, Nuclear Energy
- DEGS60212 Senior Advisor, Communications to the Assistant Secretary (Conservation and Renewable Energy)
- DEGS60222 Special Assistant to the Secretary, Department of Energy
- DEGS60225 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for Policy and International Affairs
- DEGS60233 Special Assistant to the Assistant Secretary for Policy and International Affairs
- DEGS60253 Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS60256 Intergovernmental Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
- DEGS60265 Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science
- DEGS60276 Senior Policy Advisor to the Director, Office of Science
- DEGS60278 Special Assistant to the Director, Office of Economic Impact and Diversity Federal Energy Regulatory Commission
- DRGS51517 Policy Adviser to a Member of the Commission to the Member—Federal Energy Regulatory Commission
- DRGS60001 Regulatory Policy Analyst to the Director, Markets, Tariffs, and Rates
- DRGS60003 Confidential Assistant to the Member—Federal Energy Regulatory Commission
- DRGS60004 Director, Public Affairs to the Deputy Director, External Affairs
- DRGS60005 Intergovernmental Affairs Specialist to the Deputy Director, External Affairs
- Section 213.3332 Small Business Administration*
- SBGS00540 Director of Small Business Administrations Center for Faith-Based and Community Initiatives to the Chief of Staff and Chief Operating Officer
- SBGS00553 Associate Administrator for International Trade to the Associate Deputy Administrator for Capital Access
- SBGS00555 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs
- SBGS00561 Deputy Director for Small Business Administrations Center for Faith-Based and Community Initiatives to the Director of Small Business Administrations Center for Faith-Based and Community Initiatives
- SBGS00562 Special Assistant to the Associate Administrator for Field Operations
- SBGS00565 Special Assistant to the Chief of Staff and Chief Operating Officer
- SBGS00567 Policy Analyst to the Associate Administrator for Policy
- SBGS00568 Speechwriter to the Associate Administrator for Communications and Public Liaison
- SBGS00569 Special Assistant to the Chief of Staff and Chief Operating Officer
- SBGS00570 Special Assistant to the Associate Administrator for International Trade
- SBGS00572 Regional Administrator (Region 2) to the Associate Administrator for Field Operations
- SBGS00573 Special Assistant to the Administrator
- SBGS00574 Assistant Administrator for Field Operations to the Associate Administrator for Field Operations
- SBGS00576 Deputy Associate Administrator for Communications and Public Liaison to the Associate Administrator for Communications and Public Liaison
- SBGS00578 Regional Administrator (Region 1) to the Associate Administrator for Field Operations
- SBGS00579 Special Assistant to the Associate Administrator for Field Operations
- SBGS00580 Special Assistant to the Chief of Staff and Chief Operating Officer
- SBGS00581 Press Secretary to the Associate Administrator for Communications and Public Liaison
- SBGS00582 Senior Advisor to the Deputy Administrator
- SBGS00583 Assistant Administrator to the Associate Administrator for Policy
- SBGS00584 Policy Analyst to the Associate Administrator for Policy

- SBGS00585 Director of Scheduling to the Chief of Staff and Chief Operating Officer
- SBGS00586 Special Assistant to the Deputy Administrator
- SBGS00587 Senior Advisor for Policy and Planning to the Associate Administrator for Policy
- SBGS60010 Senior Advisor to the Chief Operating Officer and Chief Information Officer
- SBGS60153 Deputy Associate Administrator for Intergovernmental Affairs to the Associate Administrator for Field Operations
- SBGS60154 Deputy Director, External Affairs to the Director of External Affairs
- SBGS60160 Senior Advisor to the Assistant Administrator for International Trade to the District Director
- SBGS60170 Regional Administrator, Region VIII, Denver Colorado, to the Assistant Inspector General for Inspections and Evaluation
- SBGS60171 Regional Administrator, Region VII, Kansas City, Missouri to the District Director
- SBGS60173 Regional Administrator, Region VI, Dallas, Texas to the District Director
- SBGS60174 Regional Administrator to the Associate Administrator for Field Operations
- SBGS60175 Regional Administrator to the District Director, Office of Field Operations
- SBGS60178 Regional Administrator, Region III, Philadelphia, Pennsylvania to the Associate Administrator for Field Operations
- SBGS60188 Regional Administrator, Region IX, San Francisco to the Administrator
- SBGS60189 Regional Administrator, Region X, Seattle Washington to the Associate Administrator for Field Operations
- SBGS60356 Special Assistant to the Associate Administrator for Strategic Alliances
- SBGS60533 Associate Administrator for Strategic Alliances to the Administrator
- SBGS60535 Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development
- SBGS60543 Associate Administrator for Policy to the Administrator
- SBGS60546 Senior Advisor to the Ombudsman to the National Ombudsman
- SBGS60558 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs
- SBGS60559 Assistant Administrator for Congressional and Legislative Affairs to the Associate Administrator for Congressional and Legislative Affairs
- for Congressional and Legislative Affairs
- Section 213.3333 Federal Deposit Insurance Corporation*
- FDOT00003 General Counsel to the Chairman of the Board of Directors (Director)
- FDOT00010 Chief of Staff to the Chairman of the Board of Directors (Director)
- Section 213.3334 Federal Trade Commission*
- FTGS60001 Director, Office of Public Affairs to the Chairman
- FTGS60002 Congressional Liaison Specialist to the Director, Office of Congressional Relations
- FTGS60006 Congressional Liaison Specialist to the Chairman
- FTGS60026 Confidential Assistant to a Commissioner
- FTGS60027 Confidential Assistant to a Commissioner
- Section 213.3337 General Services Administration*
- GSGS00063 Director of Marketing to the Deputy Associate Administrator for Communications
- GSGS00084 Special Assistant to the Regional Administrator, Region VI Kansas City
- GSGS00087 Special Assistant to the Regional Administrator, (Region IX-San Francisco)
- GSGS00099 Senior Advisor to the Regional Administrator, Region 3, Philadelphia, Pennsylvania
- GSGS00122 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
- GSGS00130 Senior Advisor to the Regional Administrator, Region 7, Fort Worth, Texas
- GSGS00132 Special Assistant to the Regional Administrator to the Regional Administrator, Region 10, Auburn, Washington
- GSGS00133 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
- GSGS00150 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
- GSGS00156 Confidential Assistant to the Chief of Staff
- GSGS00157 Chief of Staff to the Commissioner, Public Buildings Service
- GSGS00158 Confidential Assistant to the Associate Administrator for Small Business Utilization
- GSGS00159 Deputy Director for Communications to the Deputy Associate Administrator for Communications
- GSGS00160 Congressional Relations Assistant to the Associate Administrator for Congressional and Intergovernmental Affairs
- GSGS00161 Public Affairs Assistant to the Deputy Associate Administrator for Communications
- GSGS00162 Special Assistant to the Deputy Associate Administrator for Communications
- GSGS00163 Confidential Assistant to the Associate Administrator for Performance Improvement
- GSGS00164 Senior Advisor to the Commissioner, Federal Technology Service
- GSGS00165 Special Assistant to the Chief Acquisition Officer
- GSGS01317 Associate Administrator for Performance Improvement to the Administrator
- GSGS60069 Events Management Specialist to the Deputy Director for Communications
- GSGS60079 Senior Advisor to the Regional Administrator, Region 2, New York
- GSGS60082 Senior Advisor to the Regional Administrator, Regional 4, Atlanta, Georgia
- GSGS60095 White House Liaison to the Chief of Staff
- GSGS60100 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs
- GSGS60103 Confidential Assistant to the Administrator
- GSGS60119 Senior Advisor to the Deputy Regional Administrator
- GSGS60127 Associate Administrator for Small Business Utilization to the Administrator
- Section 213.3338 Federal Communications Commission*
- FCGS03051 Deputy Director, Office of Media Relations to the Chief of Staff
- FCGS60005 Special Assistant to the Director, Office of Legislative Affairs
- Section 213.3339 United States International Trade Commission*
- TCGS00007 Staff Assistant to a Commissioner
- TCGS00012 Confidential Assistant to a Commissioner
- TCGS00033 Staff Assistant to a Commissioner
- TCGS60015 Executive Assistant to the Vice Chairman
- TCGS60018 Staff Assistant (Legal) to a Commissioner
- TCGS60019 Senior Economist to a Commissioner

- TCGS60036 Executive Assistant to the Chairman
- TCGS60101 Executive Assistant to the Vice Chairman
- Section 213.3340 National Archives and Records Administration*
- NQGS60003 Presidential Diarist to the Archivist of the United States
- Section 213.3342 Export-Import Bank*
- EBGS60054 Special Assistant to the Vice President—Operations
- EBSL00006 General Counsel to the President and Chairman
- Section 213.3343 Farm Credit Administration*
- FLOT00054 Chief of Staff to the Chairman, Farm Credit Administration Board
- FLOT00055 Legislative Affairs Officer to the Chairman, Farm Credit Administration Board
- FLOT00056 Special Assistant to the Member, Farm Credit Administration Board
- FLOT00080 Executive Assistant to the Chairman, Farm Credit Administration Board
- FLOT60013 Executive Assistant to the Member, Farm Credit Administration Board
- Section 213.3344 Occupational Safety and Health Review Commission*
- SHGS00002 Confidential Assistant to a Commission Member (Chairman)
- SHGS00003 Confidential Assistant to a Commission Member
- SHGS60008 Counsel to a Commission Member
- Section 213.3346 Selective Service System*
- SSGS00001 Public Affairs Specialist to the Director
- SSGS03359 Executive Officer/Chief of Staff to the Director, Selective Service System
- SSGS03363 Deputy Director to the Director, Selective Service System
- Section 213.3348 National Aeronautics and Space Administration*
- NNGS00021 Public Affairs Specialist to the Senior Public Affairs Advisor
- NNGS00022 Program Specialist to the Deputy Assistant Administrator for External Relations
- NNGS00024 Editor to the Deputy Assistant Administrator for Public Affairs
- NNGS00042 Project Liaison to the Chief, Financial Officer
- NNGS00044 Legislative Affairs Specialist to the Assistant Administrator for Legislative Affairs
- NNGS00141 Executive Assistant to the Chief, Financial Officer
- NNGS00155 Executive Assistant to the Chief of Strategic Communications
- NNGS00157 Special Assistant (Correspondence) to the Administrator
- NNGS01420 Congressional Relations Specialist to the Assistant Administrator for Legislative Affairs
- NNGS01430 Executive Assistant to the General Counsel
- NNGS01440 Strategic Communication Specialist to the Assistant Administrator for Public Affairs
- NNGS02317 Special Assistant to the Inspector General
- NNGS30115 White House Liaison to the Administrator
- NNGS60020 Writer-Editor to the Assistant Administrator for Public Affairs
- Section 213.3351 Federal Mine Safety and Health Review Commission*
- FRGS60024 Confidential Assistant to the Chairman
- Section 213.3353 Merit Systems Protection Board*
- MPGS00002 Confidential Assistant to a Member
- MPGS60010 Confidential Assistant to the Chairman
- Section 213.3355 Social Security Administration*
- SZGS00011 Special Assistant to the Deputy Commissioner
- SZGS00016 Special Assistant to the Chief of Staff
- SZGS00017 Associate Commissioner for External Affairs to the Deputy Commissioner for Communications
- SZGS60008 Special Assistant to the Chief of Staff
- SZGS60012 Executive Editor to the Associate Commissioner for Retirement Policy
- Section 213.3356 Commission on Civil Rights*
- CCGS60013 Special Assistant to a Commissioner
- CCGS60029 Special Assistant to a Commissioner
- CCGS60033 Special Assistant to a Commissioner
- Section 213.3357 National Credit Union Administration*
- CUOT00030 Associate Director of External Affairs to the Chairman
- CUOT01158 Director, Congressional and Governmental Affairs to the Chairman
- CUOT01191 Senior Advisor and Chief of Staff to the Chairman
- CUOT01192 Executive Assistant to a Member
- CUOT60026 Special Assistant to the Chairman and Director of External Affairs
- Section 213.3360 Consumer Product Safety Commission*
- PSGS00070 Special Assistant (Legal) to the Chairman, Consumer Product Safety Commission
- PSGS60006 Special Assistant (Legal) to the Chairman, Consumer Product Safety Commission
- PSGS60007 Director, Office of Congressional Relations to the Chairman, Consumer Product Safety Commission
- PSGS60008 Program Assistant to the Chairman, Consumer Product Safety Commission
- PSGS60010 Executive Assistant to a Commissioner
- PSGS60014 General Counsel to the Chairman, Consumer Product Safety Commission
- PSGS60061 Executive Assistant to a Commissioner
- PSGS60062 Special Assistant (Legal) to a Commissioner
- PSGS60063 Special Assistant (Legal) to a Commissioner
- PSGS60066 Supervisory Public Affairs Specialist to the Executive Director
- Section 213.3365 Chemical Safety and Hazard Investigation Board*
- FJGS60001 Special Assistant to the Chief Operating Officer
- Section 213.3367 Federal Maritime Commission*
- MCGS60003 Counsel to a Member
- MCGS60006 Counsel to a Member
- MCGS60042 Counsel to a Member
- Section 213.3370 Millennium Challenge Corporation*
- CMOT00001 Executive Assistant to the Chief Executive Officer
- Section 213.3373 Trade and Development Agency*
- TDGS00004 Public Affairs Specialist to the Director
- Section 213.3376 Appalachian Regional Commission*
- APGS00004 Confidential Policy Advisor to the Federal Co-Chairman
- APGS00005 Policy Advisor to the Federal Co-Chairman
- Section 213.3379 Commodity Futures Trading Commission*
- CTGS60001 Administrative Assistant to the Chief of Staff
- CTGS60003 Administrative Assistant to a Commissioner
- CTGS60004 Administrative Assistant to a Commissioner
- CTGS60012 Special Assistant to a Commissioner
- CTGS60014 Special Assistant to a Commissioner

- CTGS60477 Attorney-Advisor (General) to a Commissioner
- CTOT00033 Director, Office of External Affairs to the Chairperson
- Section 213.3382 National Endowment for the Arts*
- NAGS00004 Director of Development to the Senior Deputy Chairman
- NAGS00025 General Counsel to the Chairman, National Endowment for the Arts
- NAGS00062 Counselor to the Chairman, Chairman National Endowment for the Arts
- NAGS60049 Deputy Congressional Liaison to the Director, Office of Government Affairs
- NAGS60077 Director of Communications to the Chairman, National Endowment for the Arts
- NASL00001 Executive Director, President's Committee on the Arts and Humanities to the Chairman, National Endowment for the Arts
- Section 213.3384 Department of Housing and Urban Development*
- DUGS00021 Staff Assistant to the Secretary, Housing and Urban Development
- DUGS00032 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Public and Indian Housing
- DUGS00041 Advance Coordinator to the Assistant Secretary for Administration, Chief Human Capital Officer
- DUGS00044 Special Assistant to the Deputy Secretary, Housing and Urban Development
- DUGS00170 Staff Assistant to the Assistant Secretary for Public and Indian Housing
- DUGS60037 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
- DUGS60114 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
- DUGS60120 Media Outreach Specialist to the Assistant Secretary for Public Affairs
- DUGS60138 Special Assistant to the Assistant Secretary for Community Planning and Development
- DUGS60179 Staff Assistant to the Director of Executive Scheduling
- DUGS60195 Staff Assistant to the Deputy Assistant Secretary for Economic Affairs
- DUGS60206 Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
- DUGS60211 Staff Assistant to the Director of Executive Scheduling
- DUGS60212 Staff Assistant to the Assistant Secretary for Community Planning and Development
- DUGS60213 Staff Assistant to the Assistant Secretary for Policy Development and Research
- DUGS60216 Deputy Assistant Secretary for Special Needs to the Assistant Deputy Secretary for Field Policy and Management
- DUGS60224 Regional Director, Seattle, Washington, to the Deputy Secretary, Housing and Urban Development
- DUGS60238 Special Assistant to the Regional Director
- DUGS60255 Special Assistant to the Assistant Secretary for Policy Development and Research
- DUGS60260 Staff Assistant to the Deputy Assistant Secretary for Public Housing and Voucher Programs
- DUGS60263 Special Assistant to the Assistant Secretary for Public Affairs
- DUGS60272 Deputy Assistant Secretary for Economic Affairs to the Regional Director
- DUGS60276 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
- DUGS60279 Associate Deputy Assistant Secretary for Fair Housing and Equal Opportunity to the Assistant Secretary for Fair Housing and Equal Opportunity
- DUGS60281 Special Projects Officer to the Assistant Secretary for Housing, Federal Housing Commissioner
- DUGS60288 Congressional Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
- DUGS60317 Special Assistant to the Regional Director, Midwest (Chicago)
- DUGS60343 Special Assistant to the Regional Director, Greensboro, North Carolina
- DUGS60344 Staff Assistant to the Assistant Secretary for Public Affairs
- DUGS60361 Regional Director, Denver Colorado, to the Assistant to the Secretary/White House Liaison
- DUGS60366 Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing to the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing
- DUGS60387 Scheduling Coordinator to the Special Assistant for Office Operations
- DUGS60391 Special Assistant to the Regional Director, Mid Atlantic, Philadelphia
- DUGS60396 Staff Assistant to the Special Assistant for Office Operations
- DUGS60423 Staff Assistant to the Assistant Secretary for Administration, Chief Human Capital Officer
- DUGS60431 Regional Director, Kansas City, Kansas, to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
- DUGS60458 Legislative Assistant to the Deputy Assistant Secretary
- DUGS60461 Staff Assistant to the Director of Executive Scheduling
- DUGS60462 Special Assistant to the Assistant Secretary for Community Planning and Development
- DUGS60464 Special Projects Coordinator to the Regional Director (Southeast) Atlanta
- DUGS60470 Staff Assistant to the General Counsel
- DUGS60482 Deputy Director, Center for Faith Based and Community Initiatives to the Director, Center for Faith Based and Community Initiatives
- DUGS60489 Special Assistant to the Assistant Secretary for Public and Indian Housing
- DUGS60505 Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
- DUGS60517 Regional Director to the Assistant Deputy Secretary for Field Policy and Management
- DUGS60522 Deputy Assistant Secretary for Grant Programs to the Secretary, Housing and Urban Development
- DUGS60525 Deputy White House Liaison to the Secretary, Housing and Urban Development
- DUGS60542 Assistant to the Secretary and White House Liaison to the Secretary, Housing and Urban Development
- DUGS60543 Staff Assistant to the Assistant Secretary for Administration, Chief Human Capital Officer
- DUGS60546 Special Assistant to the Deputy Secretary, Housing and Urban Development
- DUGS60561 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs
- DUGS60571 Deputy Assistant for Policy Development and Research to the Assistant Secretary for Policy Development and Research
- DUGS60583 Director, Center for Faith Based and Community Initiatives to the Assistant Secretary for Administration, Chief Human Capital Officer
- DUGS60595 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
- DUGS60601 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations

- DUGS60610 Staff Assistant to the President, Government National Mortgage Association
- DUGS60620 Staff Assistant to the Assistant Secretary for Administration, Chief Human Capital Officer
- Section 213.3388 Presidents Commission on White House Fellowships*
- WHGS00013 Education Director to the Director, President's Commission on White House Fellowships
- WHGS00015 Staff Assistant (Office Automation) to the Director, President's Commission on White House Fellowships
- WHGS00016 Deputy Director, President's Commission on White House Fellowships to the Director, President's Commission on White House Fellowships
- Section 213.3382 National Endowment for the Humanities*
- NHGS60065 Special Assistant to the Chairman
- NHGS60075 Director of Communications to the Deputy Chairman
- NHGS60076 Director, We the People Office, to the Deputy Chairman
- Section 213.3389 National Mediation Board*
- NMGS60053 Confidential Assistant to a Member
- NMGS60054 Confidential Assistant to a Member
- NMGS60056 Confidential Assistant to the Chairman
- Section 213.3391 Office of Personnel Management*
- PMGS00025 Special Assistant to the Director, Office of Communications and Public Liaison
- PMGS00033 Chief, Office of Senate Affairs to the Director, Office of Congressional Relations
- PMGS00034 Scheduler and Briefing Operations Coordinator to the Chief of Staff
- PMGS00036 Special Assistant to the Director, Office of Communications and Public Liaison
- PMGS00037 Chief, Office of House Affairs to the Director, Office of Congressional Relations
- PMGS00040 Chief of Administration and Confidential Assistant to the Director, Office of Congressional Relations
- PMGS00041 Special Assistant (Senior Speech Writer) to the Director, Office of Communications and Public Liaison
- PMGS00043 White House Liaison to the Chief of Staff
- PMGS00044 Executive Director, Chief Human Capital Officers' Council to the Director
- PMGS00047 Special Assistant to the Deputy Director
- PMGS00049 Legislative Assistant to the Chief, Office of House Affairs
- PMGS00052 Special Counsel to the General Counsel
- PMGS60010 Special Initiatives Coordinator to the Director, Office of Communications and Public Liaison
- PMGS60013 Special Assistant to the Director, Office of Communications and Public Liaison
- PMGS60017 Special Counselor to the General Counsel
- PMGS60018 Special Assistant to the Director, Office of Communications and Public Liaison
- PMGS60022 Deputy Director, Office of Communications to the Director, Office of Communications and Public Liaison
- Section 213.3392 Federal Labor Relations Authority*
- FAGS60022 Executive Assistant to the Chairman
- Section 213.3393 Pension Benefit Guaranty Corporation*
- BGSL00039 Executive Director to the Chairman
- BGSL00053 Director, Communications and Public Affairs Department to the Executive Director
- Section 213.3394 Department of Transportation*
- DTGS60003 Special Assistant to the Secretary and Deputy Director for Scheduling and Advance to the Secretary
- DTGS60017 Assistant to the Secretary for Policy to the Secretary
- DTGS60054 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
- DTGS60055 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
- DTGS60069 Director, Office of Communications and Senior Policy Advisor to the Administrator
- DTGS60129 Counselor to the General Counsel
- DTGS60147 Special Assistant to the Secretary and Director of Public Affairs
- DTGS60159 Special Assistant to the Associate Administrator for Policy
- DTGS60173 Director of Congressional Affairs to the Administrator, Office of Congressional Affairs
- DTGS60192 Special Assistant to the Secretary and Director of Public Affairs
- DTGS60195 Special Assistant for Public Affairs to the Administrator
- DTGS60202 Special Assistant to the Administrator
- DTGS60229 Senior Advisor for Maritime Policy to the Administrator
- DTGS60237 Deputy Director for Communications to the Assistant to the Secretary and Director of Public Affairs
- DTGS60258 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
- DTGS60268 Speechwriter to the Associate Director for Speechwriting
- DTGS60274 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
- DTGS60277 Staff Assistant to the Administrator
- DTGS60279 Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs
- DTGS60285 Special Assistant to the Administrator
- DTGS60292 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
- DTGS60295 Executive Assistant to the Associate Deputy Secretary
- DTGS60301 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
- DTGS60313 Director of External Affairs to the Administrator
- DTGS60316 Special Assistant to the Assistant Secretary for Aviation and International Affairs
- DTGS60317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs
- DTGS60324 Director for Scheduling and Advance to the Chief of Staff
- DTGS60338 Special Assistant to the Associate Administrator for Policy
- DTGS60341 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
- DTGS60342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
- DTGS60351 Counselor to the Deputy Secretary
- DTGS60355 Director, Drug Enforcement and Program Compliance to the Chief of Staff
- DTGS60357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
- DTGS60363 Director of Policy and Program Support to the Administrator
- DTGS60369 Deputy Assistant Secretary for Governmental Affairs to

the Assistant Secretary for Governmental Affairs	<i>Section 213.3396 National Transportation Safety Board</i>	FBOT00005 Staff Assistant to the Chairman
DTGS60371 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs	BGS60002 Special Assistant to the Chairman	FBOT00010 Special Assistant to the Chairman
DTGS60372 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs	TBGS60025 Special Assistant to the Vice Chairman	FBOT00011 Special Assistant to the Chairman
DTGS60373 Special Assistant to the Administrator for Intergovernmental Affairs to the Administrator	TBGS60033 Assistant to the Director, National Transportation Safety Board Academy for Special Projects to the Chairman	FBOT60006 Special Assistant to the Board Director
DTGS60375 White House Liaison to the Chief of Staff	TBGS60104 Special Assistant to a Member	FBOT60007 Special Assistant to the Board Director
DTGS60377 Director of Congressional, International, and Public Affairs to the Deputy Administrator	TBGS60105 Confidential Assistant to the Vice Chairman	FBOT60009 Assistant to the Board Director
DTGS60460 Director of Public Affairs to the Administrator	TBGS60106 Confidential Assistant to a Member	<b>Authority:</b> 5 U.S.C. 3301 and 3302; E.O.10577, 3 CFR 1954-1958 Comp., p. 18. Office of Personnel Management. <b>Linda M. Springer,</b> <i>Director.</i>
	<i>Section 213.3397 Federal Housing Finance Board</i>	[FR Doc. 05-22067 Filed 11-7-05; 8:45 am]
	FBOT00003 Special Assistant for External Affairs to the Chairman	<b>BILLING CODE 6325-39-P</b>



# Federal Register

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**Tuesday,  
November 8, 2005**

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**Part IV**

## **The President**

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**Proclamation 7959—Revoking  
Proclamation 7924**



## Title 3—

Proclamation 7959 of November 3, 2005

## The President

## Revoking Proclamation 7924

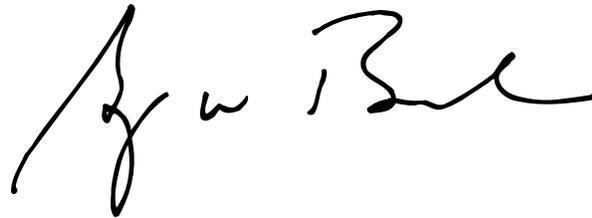
By the President of the United States of America

## A Proclamation

WHEREAS, the provisions of subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141–3148, and the provisions of all other acts, Executive Orders, proclamations, rules, regulations, or other directives providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code, were suspended by Proclamation 7924 of September 8, 2005, within specified geographic areas affected by Hurricane Katrina until otherwise provided;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 202 of the National Emergencies Act, 50 U.S.C. 1622, do by this Proclamation revoke, effective November 8, 2005, Proclamation 7924 as to all contracts for which bids are opened or negotiations concluded on or after November 8, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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Tuesday, November 8, 2005

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